Feb 14-15 argued.
No. 117 - Postponed to Saturday next.
Feb 24 R. Grier

SUPREME COURT OF THE UNITED STATES.

No. ~~107.~~ 117.

Benedict

DAVID W. WETMORE, LIBELLANT AND APPELLANT,

Owen

vs.

THE STEAMBOAT GRANITE STATE, HER TACKLE, &c., THE NEW HAVEN STEAMBOAT COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

Points - 1/ Steamer sees in daylight & the steamer but not sees boat in the dark
2/ Barges frequently lie at heads of piers
If 6 30 feet wide
Must not steamers allow for that
3/ Wind south east pitch is
Must not steamer allow for wind
Force of wind
4 Was steamer at time of collision
where she had right to be

SUPREME COURT OF THE UNITED STATES.

No. 197.

DAVID W. WETMORE, LIBELLANT AND APPELLANT,

vs.

THE STEAMBOAT GRANITE STATE, HER TACKLE, &c., THE NEW HAVEN STEAMBOAT COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 THE UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this ninth day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the second day of February in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable William D. Shipman, district judge.

DAVID W. WETMORE
vs. } 14, 505.
THE "STEAMBOAT GRANITE STATE," HER TACKLE, &C.

Dec. 24. The libellant files his libel against the above-mentioned steamboat, her tackle, &c., in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of David W. Wetmore, of the city of New York, owner of the barge Rambler, against the steamboat Granite State, her tackle, &c., in a cause of collision, alleges—

First. That this is an action founded upon a maritime tort, and the steamer is within the southern district of New York.

Second. That on or about the eighteenth day of December, A. D. 1857, the barge Rambler, owned by the libellant, and having on board a cargo of iron in charge of the libellant as a common carrier, and for which he is responsible, was lying properly and safely moored at the pier No. 23
3 in the East River, in the harbor of New York, being then engaged in receiving cargo from a ship at that pier; that while so moored the said barge was run into and afoul of by the steamboat Granite State, which vessel with her wheels and other parts cut the said barge down to the water's edge, and greatly injured her and caused her to careen over so that her deck load was precipitated into the water and the barge knocked adrift.

Third. That said barge was in all things properly equipped and provided for the business in which she was engaged, and was moored in a proper place, and the said collision was caused by no want of care or precaution on the part of the barge, but was caused solely by the want of care and precaution on the part of the said steamboat; that there was nothing to prevent the said steamer from keeping clear of said barge, as under the circumstances she was bound to have done, and as she could easily have done if she had kept a proper lookout, which she did not do, and if she had been managed with care and skill.

Fourth. That by reason of the said collision the libellant has sustained damages in the injury of his said barge and the detention thereof, and in the

cost and expense to which he will be put in raising said iron, and in the loss and damage thereon by reason of being sunk, for which the libellant is liable as aforesaid; all which cannot now be accurately stated, but will amount in all to about the sum of three thousand dollars, which sum with interest he claims to recover of the said steamboat Granite State.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course and practice of courts of admiralty and of this court, may issue against the said steamboat Granite State, her tackle, &c., and that all persons having or pretending to have any right, title, or in-
4 terest therein, may be cited to appear and answer on oath the matters herein propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and condemn the said steamer to pay the same with costs.

DAVID W. WETMORE.

Sworn before me this 23d day of Dec'r, 1857.
CHAS. W. NEWTON, *U. S. Com'r.*

BENEDICT, BURR & BENEDICT, *Proctors for Libellant.*
E. C. BENEDICT, *Advocate.*

Endorsed: 14, 505. U. S. district court, in admiralty. David W. Wetmore *vs.* the S. B. Granite State, her tackle, &c., libel. Benedict, Burr & Benedict, proctors for libellant.

Filed Dec. 24, 1857.

5 District court of the United States for the southern district of New York.

Stipulation for libellant's costs entered into pursuant to the rules and practice of this court, filed the 24th day of December, 1857.

Whereas a libel was filed in this court on the 24th day of Dec'r, in the year of our Lord one thousand eight hundred and fifty-seven, by David W. Wetmore against the steamboat Granite State, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat may be condemned and sold to pay the demands of the libellant; and the said libellant and Peter S. Wetmore, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

DAVID W. WETMORE,
Per PETER S. WETMORE.
PETER S. WETMORE.

Taken and acknowledged this 24th day of Dec., 1857, before me.
GEO. W. MORTON, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Peter J. Wetmore, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

PETER J. WETMORE.

Sworn to this 24th day of Dec., 1857, before me.

GEO. W. MORTON, *U. S. Commissioner.*

Recorded the 24 day of Dec., 1857.

G. F. B., *Clerk.*

6 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable Samuel R. Betts, district judge.

DAVID W. WETMORE
asm.
THE STEAMBOAT "GRANITE STATE," HER TACKLE, &c.

And now, Richard Peck, as agent, intervening for the interest of the New Haven steamboat "Granite State," her tackle, &c., appears before the honorable court and makes claim to the said vessel, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of David W. Wetmore; and the said Richard Peck, as agent, avers that said company was in possession of the said vessel, her tackel, &c., at the time of the attachment thereof, and that the New Haven Steamboat Company, above named, are the true and bona fide owners of the said vessel, her tackle, &c., and that no other person is the owner thereof; and the said claimants are the true and lawful baillees thereof, as owners. Wherefore, they pray to defend accordingly.

RICHARD PECK.

Sworn to, and subscribed this 29th day of December, A. D. 1857, before me.

7 GEO. F. BETTS, *U. S. Commissioner.*
OWEN & VOSE, *Proctors for Claimants.*

Endorsed: Vol. 14, No. 505. United States district court for the southern district of New York. The steamboat Granite State, her tackle, &c., *asm.* David M. Wetmore. Owen & Vose, proctors for claimant. Claim of New Haven Steamboat Company.

Filed the 29th day of December, 1857.

8 District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court, filed the 29th day of December, 1857.

Whereas a libel was filed in this court on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, by David W. Wetmore against the steamboat Granite State, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamboat, her tackle, &c., may be condemned and sold to pay the demand of the libellant, and the parties hereto hereby consenting that in case of de-

fault or contumacy on the part of the claimants or their sureties execution for the sum of two hundred and fifty dollars may issue against their goods, chattles, and lands; and whereas, also, a claim has been filed in said cause by the New Haven Steamboat Company: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

NEW HAVEN STEAMBOAT CO.
By RICHARD PECK, *Ag't.*
ELIPHALET BOOTMAN.
SAMUEL SHEDEN.

Taken and acknowledged this 29th day of December, 1857, before me.
GEO. F. BETTS, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Eliphalet Bootman and Samuel Sheden, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ELIPHALET BOOTMAN.
SAMUEL SHEEDEN.

Sworn to this 29th day of December, 1857, before me.
GEO. F. BETTS, *U. S. Commissioner.*

Recorded the 29th day of December, 1857.
G. F. B., *Clerk.*

9 District court of the United States for the southern district of New York, in admiralty.

Stipulation entered into pursuant to the rules and practice of this court, filed the 29th day of December, 1857.

Whereas a libel was filed on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, by David W. Wetmore against the steamboat Granite State, her tackle, and for the reasons and causes in the said libel mentioned; and whereas the parties in interest have consented to waive the service of process of attachment against the said steamboat on the claimants exacting stipulations for costs, and value the latter in the sum of four thousand dollars in lieu of the said steamboat being in the custody of the marshal, under the process to be issued in pursuance of the prayer of said libel, and the claimants further consenting to appear and answer the libel on file on or before the 19th day of January next, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their sureties execution for the above amount may issue against their goods, chattles, and lands: Now, therefore, the condition of this stipulation is such that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen & Vose, esquires, proctors for the claimants of the said steamboat, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate

court if any appeal intervene, then this stipulation to be void; otherwise, to remain in full force and virtue.

NEW HAVEN STEAMBOAT CO.,
By RICHARD PECK, *Ag't.*
ELIPHALET BOOTMAN.
SAMUEL SHEDEN.

Taken and acknowledged this 29th day of December, 1857, before me.
GEO. F. BETTS, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Eliphalet Bootman and Samuel Sheden, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he resides in the southern district of New York, and that he is worth the sum of eight thousand dollars over and above all his just debts and liabilities.

ELIPHALET BOOTMAN.
SAMUEL SHEDEN.

Sworn to this 29th day of December, 1857, before me.
GEO. F. BETTS, *U. S. Commissioner.*

Recorded the 29th day of December, 1857.
G. F. B., *Clerk.*

To the Honorable Samuel R. Betts, judge of the district court within and for the southern district of New York:

The answer of the New Haven Steamboat Company, the claimants and respondents, to the libel and complaint of David W Wetmore against the steamboat Granite State, her tackle, &c., in a cause of collision, alleges and articulately propounds as follows:

First. That before and at the time of the alleged collision these respondents were the owners of the said steamboat Granite State, her tackle, &c., and claim the right to intervene for their interest therein in this action.

Second. These respondents, upon information and belief, deny the several allegations contained in the second and third articles of the said libel.

Third. They further, upon information and belief, in respect of the alleged collision, say that the aforesaid steamboat, before and at the time in the libel alleged, was employed by the respondents as a freight and passenger boat, running to and from Hartford and New York; that on the 18th day of December, 1857, the said steamboat reached the city of New York in one of her regular trips from Hartford aforesaid, about 4 o'clock in the morning, having on board a large quantity of freight and passengers, and being at the time well and sufficiently officered and manned, and having a
11 skilful and competent pilot on board, and had all her lights properly set and burning, and a competent lookout stationed, as in these several respects is required by law and usage and custom. That at the time of such arrival, and for several hours before, the wind was and had been blowing a strong gale from the southeast, or thereabouts, and the night was and had been dark and raining; the tide was about the last of the ebb. That after the said steamboat had so reached the city, and had rounded to and with her head up the East River, and was endeavoring to reach her berth, which is in the slip between piers 24 and 25 East River, she encountered difficulty, and was embarrassed in her movements by the ferry-boat of the Williamsburgh ferry, which started out of her berth at about that moment, whereupon, to avoid a collision with the said ferry-boat, the steamboat was forced and obliged to stop and back, which she did until she was obliged to stop backing from fear of collision with another ferry-

boat, which had just then started out from her berth at the foot of Fulton street, New York, and was compelled to start ahead again towards her aforesaid berth, which she did, and in the act of going ahead, having experienced all the embarrassments aforesaid, with the wind blowing in heavily from the southeast, constantly drifting her in shore, she was accidentally and unavoidably forced and driven upon the said barge, which was improperly lying there, as hereafter more particularly mentioned and described.

12 That before and at the time of the movements and embarrassments, and the collision last mentioned, the master and all hands were on deck at the proper stations, and engaged in their proper duties in endeavoring carefully, cautiously, and safely to bring the steamboat to her berth without doing or receiving any injury. That the engineers were at their post, and there was duly and properly stationed a competent and proper lookout. That when the barge was first discovered every reasonable and proper effort was made by them on board of the steamboat to avoid the collision, but the same was inevitable, and without any blame, fault, want of care, or precaution on the part of the steamboat; and these respondents deny each and every allegation of the libel in anywise to the contrary.

Fourth. These respondents, upon information and belief, further say that the barge in the libel mentioned was at the time aforesaid lying at the end of pier number 23, East River, (commonly called the Black Ball pier,) with her head to the westward, or down the river; that she had no light set or burning, nor had she any person on board of her as keeper or otherwise; that she lay below the surface of the dock, and had no masts or bowsprit, and was not readily or easily visible; that she had been so improperly left from about six o'clock of the evening previous. And these respondents aver that the libellant was guilty of neglect and misconduct in leaving the said barge in such a position on such a stormy and boisterous night, without a

13 watch or other keeper, and without a suitable light to warn approaching vessels of her position. That if there had been any person on board to have hailed, or given warning of the position of the barge, or if there had been a proper light set and burning in the proper place the collision would not have occurred. The respondents aver that the collision was occasioned by the neglect of such duties, and by the misconduct and omission of duty of the libellent, his agents, and servants, and not otherwise; and they deny the allegations of the libel to the contrary.

Fifth. These respondents further say that by the collision aforesaid the said steamboat sustained injuries, the amount of which they are at present unable to state, but which they claim to recover from the libellant.

Sixth. They, further answering, deny the several allegations contained in the fourth article of the said libel. They deny in a special manner that the libellant is entitled to recover in this action the value of the iron alleged to have been lost, or the cost and expenses of raising the same, or the loss and *and* damage thereon. They deny that the libellant is entitled to recover any sum for the alleged damages in the libel mentioned.

Seventh. That all and singular the premises are true, in verification whereof, if denied, the respondents crave leave to refer to the proofs to be adduced in this action.

OWEN & VOSE, *Resp'd'ts' Proctors.*
RICHARD PECK, *Agent.*

Subscribed and sworn to before me this 6th day of February, 1858, by Richard Peck, agent for the claimants, the New Haven Steamboat Company.

[SEAL.]

EDWIN F. COREY, JR.,
Notary Public for the State of New York.

14 Endorsed: 14,505. U. S. district court. The steamer Granite State, &c., answer, *ads.* David W. Wetmore. Owen & Vose, resp'dts' proct's.
Filed Feb'y 8, 1858.

15 U. S. district court.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE, &C.

We consent that Owen, Gray & Owen, esq'rs, be substituted in our place as proctors for the claimants in this action.
Dated New York, Feb'y 21, 1860.

OWEN & VOSE, *Clm'ts' Proctors.*

At a stated term of the district court of the United States for the southern district of New York, at the City Hall, in the city of New York, on the 21st day of February, 1860.
Present: Hon. Samuel R. Betts, district judge.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE, &C.

On reading and filing the consent of Owen & Vose, proctors for the
16 claimants in the above action, it is ordered that Owen, Gray & Owen, esq'rs, be, and they are hereby, substituted in their place as proctors for the claimants therein.
Endorsed: 14, 505. U. S. district court. David W. Wetmore *vs.* the steamboat Granite State, &c. Consent and order to substitute proctors. Owen, Gray & Owen, cl'ts' proct's.
Filed 21 Feb'y, 1860.

17 U. S. district court.

DAVID W. WETMORE, OWNER OF BARGE Rambler, *vs.* THE STEAMBOAT GRANITE STATE, NEW Haven St'boat Co., cl'm'ts. } Collision at pier No. 23, E. R.

Benedict B. & B. for lib's. Owen & Vose, for cl's.

TUESDAY, *January* 18, 1859.

Pleadings read.

Arthur Russell sworn for lib't:
Lighter and barge master, and was master of Rambler at time of collision; was loading with bundles iron from ship Great Western, laying at pier 23; was receiving the iron from the dock, and was lying from the previous day at end of dock; had taken in part of load, and knocked off work ¼ past 6, to take in residue next day; moored his vessel with two chain springs on dock, and 2 lines to Great Western, and 2 lines to vessel below. The fastening was sufficient and good. Wind S. and E. No appearance of storm. The position was a proper one for his vessel; has been there several times, vessels usually lying there. It was necessary for him to be there to get the iron. Witness was at dock ½ past 6 a. m.; did not remain over night with his vessel; not usual to do so in port. About whole sail breeze when he

came down; vessels were running up the river all full. When he came down he found his vessel drifting up the river about off pier 45. After towing her in found her larboard quarter broken right down through her deck;
18 found part of bucket of steamer, and some iron bands adhering to barge; was towed into pier by tug Chase.

Cross.

Had been in command of barge about five months. Had 12 or 13 men employed on his vessel at time; her burthen was about 130 or 140 tons; about 80 feet in length, and 18 feet beam; was a barge, moved by towing. It was about 9 a. m., Dec. 19, 1857, when his barge took her berth, but did not get any iron out of ship until about 1 p. m. Ship 1,800 tons; was head in; the ~~ship~~ and she discharged iron on the dock, whence it was laden on barge; stern of ship 20 feet inside the pier. Barge lay with her head west, towards the battery; was not ½d filled that day; iron was loaded partly in hold, and part, say 1,000 lbs., on deck. Flood tide when he broke off work; running flood, say two hours up; deck was below surface of dock when he left barge that night. Barge light came 5 or 6 feet out of water, and when loaded about 3 feet. The other vessel to which he had lines was opposite to Great Western, on lower side, same pier, and lay in about as far as G't Western; was a sch'r alongside latter; does not say he ever before lay at end of same pier; has frequently been at end of pier; never hauls in the pier for the night, unless called to do so by his business, or there is appearance of heavy blow; did not ask permission of harbor-master to lie there; had none that night as ship-keeper; did not hang out any light for night; keeps none on barge; his vessel runs 15 or 20 feet beyond each side of pier; should not have towed the barge away had he expected a blow that night, but would put her in the slip if he could have got her inside.

19 *Re-direct.*

Highest part of caboos was 13 feet above the water when he left vessel that night; never uses lights on vessels at night; thinks she would be seen there 300 feet off in dark nights, but so that steamers can run; saw her that same evening from Fulton ferry-boat as he was crossing the river.

Re-cross.

Cannot recollect whether it was cloudy or star-light; when he left barge that night wind was SE., blowing on that shore.

William Pease sworn:

In the business of tugging about the harbor; went out picked up the Rambler; she lay bow down and stern up; bow on ground. Wit. was in Market Street slip on his tug that night. It was a rainy dark night; nothing special further than that wind was fresh but not aware how hard it was blowing; but doesn't think there was any difficulty in managing steam vessels that night. Been employed about harbor 25 y'rs. Picked her up near Grand St. ferry; has towed the barge many times. Thinks could see that vessel 150 yards or more off end of pier such a night. It is usual ~~for~~ that class to lye about the ships whenever they can make fast; there a good many about the harbor. Was at foot of Jackson st. with the barge when pilot of steamer came to look for her; witness asked him how accident happened. He said ferry-boat shot out suddenly just as his steamer was getting past, and he was obliged to sink the ferry-boat or the barge, and he wished to run into her; but master of steamer would not allow that, and therefore he

had to run upon the barge. He said he saw difficulty for steamer to avoid vessel at pier if her wheels are stopped, and she is subject to a winding driving her sideways on.

Cross.

Laid up his tug about dusk that night, weather cloudy, some rain, and wind SE. about pretty directly on to end of piers; turned in about 10 p. m; weather not much altered for better or worse; a rough kind of night. Stayed with his boat that night; generally turn out at 4 or 5 a. m., but does recollect he was about that morning earlier than 6 o'clock. The weather a little rainy and blustering somewhat, but not heavy; wind SE., or about that direction, but not heavy. Wit. was on deck of his boat when pilot of steamer spoke to him and called witness to him on board of ship to which barge was tied; he said he was the pilot of steamer, and then described occurrence; gave wit. to understand that it was Peck slip ferry-boat that obstructed him.

Defence.

Arthur Russell, again:

Lib'lt has a slip or bulkhead on Brooklyn side above Catherine st. Adams st., where the load of iron was to be taken; he does not own tugs, but hires them to take his lighters about.

Joseph H. King sworn:

Master of Granite State, 9 or 10 years master, and of that boat ever since she was built 5 or 6 y'rs; 1,000 tons burthen; 265 feet long; runs between N. Y. and Hartford in summer, and in winter between N. Y. and N. Haven; freight and passenger vessel; leaves Hartford 2 p. m., comes into N. Y. between 3 and 4 a. m. On this trip she had passengers and freight, and was on an usual trip; she arrived here a few minutes before 4 o'clock. Wit. was in the pilot-house at time; came in on ebb tide, rounded to at dock; all hands called at Throgs Neck (20 miles off) to get in readiness for landing; when got down and attempted to round to near their dock and slip No. 24; came down on Brooklyn side to nearly abreast Fulton ferry, N. Y. side, and got one length off his own dock or possibly more, where W'mburgh ferry-boat slip came out between piers 24 and 25; steamboat berth is east side of 25; ferry-boat started out between piers 25 and 26; witness gave signal bell to back; that order was obeyed, and the steamer was backed 3 or 4 lengths out angularly into the river, then was stopped by a Fulton ferry-boat, which prevented his vessel going further astern, which was going out of her slip towards Brooklyn. His steamer was then started ahead again for his berth, and when nearly abreast of pier 23 discovered barge (Rambler) at her place; wind blowing strongly SE. and dark saw her from pilot-house; and also heard call from forward deck, supposes from the lookout; thinks then the barge was 60 feet from ~~stern~~ stem of steamer and near her midships, she drifting broadside on; barge lay at end of pier, each end projecting beyond end of pier. The wind was blew so hard that he gave signal to work extra ~~head~~ hard to keep off Great Western; did not see barge at all until after that order; cleared stern of that ship, and hit barge; corner of steamer's bucket (water-wheel) struck ~~fore~~ port quarter of barge a moment after she was first discovered; nothing could be done safely than to avoid her. If she had masts, &c., might have observed her sooner; could do nothing then but use all his power to prevent being driven broadside by the wind on to the dock; could not see whether her deck was above or below surface of dock; she appeared like part of the dock, was of same color and overshadowed by stern of the

ship; could not discern her at all; it was dark and raining hard; took his usual course in coming round and working into his berth; witness and pilot in pilot-house; had regular watchmen on the lookout, pilot and wheelsman at wheel; mate forward on deck; fenders was down and lines out, and everything in order; had steamboat light up, had sufficient head of steam on; no hail or warning to his boat from ship or dock to avoid the slip. The pilot described by Pease was not on deck or acting at time; he was river pilot on Connecticut, and not on duty at time, his duty ended at Stamford, and then the regular sound pilot took the boat and brought her into N. Y.; 10 or 11 y'rs that witness as master has run regularly in and out of that slip, and has run the route 21 y'rs; his boats come into that berth before daylight at that period of the year. Never before seen a barge at end of that pier without masts; it is unusual not to see one or two ships lying there; that pier projects 50 or 60 feet beyond that to his slip, and also about same from piers below. On ebb tide we work ship in by throwing head line to end of pier No. 26 and stern line to No. 25; ease off on head line and work in by straining on stern line; and was at time following out that method
23 of getting into his berth after seeing that W'mburgh ferry-boat was out of their way. Had there been a light on barge, should have discovered something in the way; so if anybody had hailed from it at a proper distance, but not after steamer got so near. Does not think it prudent for craft so tender as she was to be lying there without being prepared to give vessels warning of her presence; considered her deranged. After he got his steamer berthed, he went round to see what had been the consequence of hitting her; she was sunk forward without breaking loose, and could not tell whether there was danger of her doing so; nobody on board her; heard about breakfast time that hulk was floating by.

Cross.

Came down on Brooklyn side; could not tell how near to there; did not see shore, only lights on shore, and ships lying alongside; could see them by their spars, &c., but could not tell whether inside or outside; went into pilot house at Throgs Neck and staid there until after the collision; pilot rail, and one wheelsman, Lane. Snow was lookout, heard him give notice of object ahead; could not see Snow then; thinks pilot and Snow called out about same time; but cannot give words; witness was on port side of pilot-house; as soon as barge was discovered he rung bell to work *extra* ~~slow~~ in order to avoid the barge; wheels were moving when barge was struck, and that was the force which carried the boat to her berth; boat probably
1½ her length from the dock, when she got round opposite the barge;
24 was about as far out as pier 27 when he disoovered W'mburgh ferry-boat; when began working back was between piers 24 and 27; there was just room to go into his berth had there been a slip at No. 27; could not tell how far his steamer was off 24 when W'mburgh boat came out, as his attention was directed to her.

Re-direct.

Cannot tell how far his stern was off; was moving up slowly when W'mburgh boat came out; rung 2 bells to back then and were promptly answered; next rung 1 stroke of gong to go ahead, to avoid Fulton ferry-boat working by hand; next bell to hook on, then moving as usual to their dock.

Elias H. Snow sworn:

Mate on steamer, been so since she was built; 25 or 26 years familiar with passage way between Fulton and Catherine markets. Witness was sta-

tioned on forward deck when boat made her turn in for her berth about 4 a. m.; dark and rainy and blowing very hard from SE; rained during the night; crew all at their proper stations as boat was coming in; stern lay off towards Gov'r's Island when she rounded to; could not tell distance from his dock, conjectured 1½ length off, then W'mburgh ferry-boat came out and steamer backed; stopped backing and moved ahead again, when collision occurred; thinks watchman first discovered barge, and wit. about same time; thinks were then 50 or 60 feet from her position, then a little ahead of her. Witness thought it a float or raft and not a vessel; looked like a black streak, would discern looming ship some distance and so up a dock towards lights, but not end of dock, could not see this ob-
25 ject; it was rainy and dark; could do nothing to avoid her after she was discovered, could have exposed just as much to have stopped, would [redacted] against her; steamer made a good start to come into dock; could not possibly from the place where steamer stopped see the barge; no recollection of ever seeing a vessel without masts lying at end of piers 27 or 24 when he came in; barge had no bowsprit, was dark color, appearance of a dock, nearly low water on ebb-tide. It was not prudent for her to lie in that condition at end of dock; had any one hailed them when they backed down past, steamer might have avoided her; no hail from her.

Cross.

Watchman sung out something alongside; witness was then standing on forward deck doing nothing; knew his voice; witness was looking and saw it about same instant, apparently 50 or 60 feet off; could hear bells at his place, was on larboard side of forward deck near rail, 3 feet from gangway door and about 80 feet from wheels; heard extra bell about the instant he saw barge and heard Snow call first; all deck hands on the steamer were around him.

Wednesday, Jan'y 19, continued.

Joseph H. Pomeroy sworn:

Is a watchman on pier No. 23, been so for fourteen months; was on duty the night of the collision from about 5 p. m. to 7 a. m. next day; was on the dock and all the ships at pier, 3 vessels there at time, 2 on upper side and one on lower. Great Western on lower side; her stern 10 to 12 feet inside of end of dock; one below the dock lay in about like position, the dock about
26 400 feet long; no lights at end of pier, no light on any of the vessels; 18 to 20 feet from top of wheel-house of G't Western to water, the *the* other ships not so high; was loaded ready for sea. Saw Rambler at end of dock; when he went on duty was on board her; he stepped directly from dock on her rail; she had no mast; don't recollect about bowsprit; at low water in morning her deck about 2 feet below surface of dock; wind about SE., and prospect of storm at 5 p. m., and began raining at 9 p. m., continuing stormy all night; saw the steamer as she was making her turn, he was 175 to 180 feet from end of pier, looking out of engine-house on deck; weather dark, should not think the barge discernable from the water any distance off, because of two high ships on her ends, and her black color (same as theirs) and position about even with dock. Does not think it prudent to leave the barge in that situation during such weather; no difficulty in rigging a light on her so as to afford a warning; should not have been willing himself to leave her there under circumstances; heard crash of steamer, but could not see any person on her deck.

Archibald Hall sworn:

Harbor-master about 20 months; his district includes the docks and slips in

question; has been a seaman and familiar with their positions and means of entry and egress. (Proves rules and regulations then in force.) No application was made to him for leave to lie at end of pier that night; did not
27 authorize it; pier 20 projects further than 23; should not think it safe for barge to lie under circumstances without a light or watch on board; all vessels at end of piers are obliged to haul to enable vessels to go in or out.

Cross.

His business is to make room for vessels.

Charles Snow sworn :

Seafaring man—been on the steamer 6 y'rs. Came on deck between 9 and 10 p. m.; was clear forward at 4 a. m; placed there as lookout, as far forward as he could stand. Had no other duty but to look out. When rounded to could not go into her berth because of W'mburgh ferry-boat then coming out, and steamer backed. After ferry-boat was out of way attempted to go in and discovered barge 50 or 60 feet off. Could not see her before; she was too much covered by dock. Saw the two ships; could have seen barge if she showed a light; could not possibly see her when steamer stopped for ferry-boat, and before going ahead. Witness looking out in port-side (towards city) when he saw her; sung out "there was something along side;" could not then see what it was. This hail was answered from pilot-house; could not understand the answer. Steamer continued going ahead. She would have cleared the stern of Great West'r. Never before has seen a barge lying at that place at such time of day.

Cross.

Thinks steamer was 1½ length from ferry-boat when first saw her;
28 tide ebb—is sure of that. Ebb nearly out; ferry-boat goes out between piers 25 and 26; does not recollect whether there was anything at end of pier 22; rained very heavy and a good deal of wind; nothing differing from usual in mode of coming in.

William A. Vail sworn :

Was pilot of steamer at time, been so in line 15 years except one season; was at wheel, capt. and wheelman with him; windows of pilot-house open at time—not positive about side windows; they are generally down as boat comes into dock. She came in in usual way; was checked going in by W'mb. ferry-boat Could not determine exact distance off ferry-boat; thinks 1½ length; backed and stopped, which brought steamer's stern on swing out. Saw Black Ball line of ships at pier as he started to go ahead; is hard of hearing in one ear, hears well with other, and does not recollect hearing hail of lookout. Can't judge with any certainty the distance the barge was from him when he first saw her, but judges it was 100 feet to more. Saw an object lying there, but could not determine what it was; thinks he discovered the object before going ahead, and after that order was given to go ahead, would probably have sagged in afoul of Fulton slip or afoul of barge,
29 (the slip where fishing smacks lay.) If steamer had sagged against barge thinks should have crushed her. Had he seen her, could have done nothing better than was done; supposed by shooting ahead he could clear her. Does not recollect of ever seeing a barge lying in night at that place previously. Had no conversation with Capt. Pease next day on subject of the collision; did not go up to Grand st. for that, &c.

Cross.

Asked Capt. King after steamer backed down if Fulton ferry-boat was in the way. He looked out and reported she was under way. Witness replied, must go ahead as soon as W'mb. boat was out of way. Difficult to say how long steamer waited; might be two minutes or more; was very short time; had then stopped backing. Thinks capt. said something was lying at end of dock, a barge or canal boat, does not know which, (right ear dull; capt. stood on his left side.) Witness then ordered boat ahead, and capt. rung to start her, and immediately to work strong. The gong bell orders engine open, and to go ahead with full force, one signal only. Did not notice pier 27 when the jingle bell rung, to see whether he was pointing inside or outside of it; might have come within 150 or 200 feet of that pier that night. Steamer runs 15 to 16 miles per hour in slack water.

Redirect.

30 When started ahead his stern was most out, and he was aiming in for his berth. Sagged in very fast towards dock when lying to. Had there been a light on barge when he rounded to, could have avoided the barge.

Recross.

Cannot tell whether his hand was on the wheel all the while whilst rounded to; it was on and off. Wheelsman could not move it without his orders.

Richard Lane sworn:

At wheel of steamer at time; ~~pulled~~ wheel hard to round to for berth; held it so when backing down; that would throw her stern off into stream. Can't tell how she backed, might have stopped her in three minutes; started her with wheel hard aport ~~starb'd~~ pointing towards her berth, head nearest there. Looked ahead, saw nothing in the way of making their birth; heard some hail from bow of steamer that something was alongside; was then going ahead; at same time capt. spoke; he nor pilot said nothing until after hail was heard; did not see the barge after this.

Cross.

Went near on to Brooklyn shore in rounding to, within 4 rods; could see vessels or spars at shore; did not go up next day to barge; went over same night after securing his ship; was on port side; threw his helm hard over to starboard after steamer got under way ahead.

Redirect.

Don't recollect the barge had then been spoken of.

31 Samuel S. Goodwin sworn:

In ballast and lightening business for 20 y'rs around N. Y. port; has owned two and had them sailed on his own account; has been to sea; knows Black Ball pier; did not consider it safe to leave his barges at any time in the night at the end of a pier; hauled them off into slips. In case of being left there had a watch kept on them for the night. Should not consider it safe to leave his barges there.

Cross.

Does not need a berth for his business in taking ballast.

Redirect.

His barges were same as Rambler, without masts and bowsprit. A light might be put up on her.

Richard J. Holmes sworn :

Stevedore 13 years; knows pier 23. Should not think it safe to leave a barge without masts lying in the night at that pier. If she was compelled to remain there over night, should certainly have a watch on board.

Joseph Jenkins sworn :

Has been on lighters 13 y'rs about port; knows pier 23; should not think it prudent to leave one over night at that pier, nor without a watchman, if necessary for her to be there.

Russell A. Post sworn :

30 years mariner out of port; commanded ship; knows pier 23; 2 or 3 days after this collision went to see the barge at Brooklyn. She was
32 hit about 10 feet forward of taffrail, (stern;) in his judgment, it was height of imprudence for the vessel and cargo to be placed at end of pier in night time; if she lay there she ought to have a ship keeper; indispensable, and, in his opinion, a light also; she is about 100 tons tonnage.

Cross.

Commanded almost all kinds of craft sea-going; been seaman, mate and master; not been at sea for 8 or 10 years past.

Redirect.

3 buckets struck barge, and mark distinctly made as they passed over her; had steamer been 10 feet further ahead would not have touched her.

William G. Hackstaff sworn :

Master of vessels since 1824 in this port; repeatedly in Black Ball line; in habit of going in and out at pier 23; not prudent or usual for barges to lie nights at end of that point; a ship keeper should certainly be on board, (if necessarily detained there,) on account of large ships to be protected; it is common for large vessels to come in there at all times; barge should also keep up lights for her own safety and of others.

For libellant in reply.

John McCreary sworn :

15 years in lightening business in this port ; owns lighters. It is usual for lighters to occupy ends of docks nights, and not to keep lights or
33 watch, unless to take care of owner cargoes. Has lain at pier 23 over night without light or watch; has also seen other lighters at same place over night.

Cross.

Has seen them there frequently in summer season; saw them last summer loaded with grain ; has seen them there lying outside of ships; seldom but vessels are at end of that pier when ice is not running. Thinks 3 or 4 y'rs since he lay there with load of that on board; left a watchman to take charge of cargo; does so to take care of the freight when loaded; that is customary with other barges when they have anything on board which may be stolen. Should not move them nights on account of wind blowing in; is only afraid to leave them nights except on account of ice and collisions. Coal barges so lie as often as can get there.

John Erle sworn :

Lightman in port for several y'rs; is in employ of li'b'lt. It is usual for lightermen in this port to lie over night at end of piers, when berth can be obtained, and it is usual for them to take in cargo from end of pier 23; witness has taken in cargo there. Should not haul away at night if part loaded; would be in danger of losing his berth; never saw a light on barge at pier, nor is watch kept unless the cargo would be in danger. Wit.
34 has been placed at end of dock by a harbor-master :

Cross.

Commands Globe barge; has done so 4 or 5 years; has no mast now; she has had since he commanded her; 160½ tons. Should not haul away from pier in day time, if part loaded, when a ship was coming in slip unless ordered to do so by harbor master. He has laid outside of ship lying across end of pier all night, pier 27, in fall of year; had a part of cargo in; left a person on board to watch goods. Lay at pier 34 all night in 1853, in August or Sept.; had cargo there and ship keeper; then lived on board with his crew. Also lay at pier 50 last year; kept a watch; had cargo in; so lay at pier 18-20; left watch when he had cargo, otherwise not.

Redirect.

Watch did not stay on deck, but only guarded the cargo.

To court : Watchman had charge of vessel and goods; was placed there to watch against thieves.

Arthur Russell again :

Covered lighter that night with tarpaulin, and kept those old sails down by iron; light color; iron was part on deck and part in hold.

Cross.

It was bundle iron; cannot say he intended to put more iron in hold; it was loaded there only for purpose of stiffening the barge. Spread iron over deck except was on poop. It is usual for lighters in this port to lie
35 at end of piers all night. Never has known them have lights kept up, and not to keep watch except to protect cargo; watch not to guard cargo of iron; been in that business here 8 to 10 years; bundles of iron he supposes weighed 100 to 112 lbs.

Mathew Gardner sworn:

Owns lighters; is ship carpenter 7 or 8 y'rs; managed lighters personally; that kind of vessels lie at end of piers over night to take in or discharge cargoes; never put up a light or saw it done, unless anchored in stream; has been repeatedly driven by harbor-master out of slips to let ships come in; has lain at end of Black Ball pier.

Cross.

7 or 8 y'rs since he has been in personal command of lighters. Those he now owns are 50 or 60 tons; have masts; his former ones were smaller.

John Erle again:

The sails used to cover the iron were of color of half worn sails, with addition of being some whitened by chalk loaded upon them; generally used to cover over cargo in barges.

Testimony closed.

Mr. Owen argues for claimants, Mr. E. C. Benedict for libellant. Cur. ad. vult.

36 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court, rooms, in the city of New York, on Saturday, the nineteenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Samuel R. Betts, district judge.

DAVID W. WETMORE
vs.
THE STEAMER GRANITE STATE, HER TACKLE, &C. } 14, 505.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against the steamer Granite State the damages occasioned by the collision in the pleading mentioned, and that it be referred to a commissioner to ascertain and compute the amount of the said damages, and report thereon to this court with all convenient speed.

SAM. R. BETTS.

37 Vol. 14, No. 505. United States district court for the southern district of New York. David W. Wetmore *vs.* the steamer Granite State, her tackle, &c. Benedict, Burr & Benedict, proctor for lib.; Owen & Vose for cl'ts. Int'y decree and order of reference.

Filed the nineteenth day of March, 1859.

38 District court.

DAVID W. WETMORE
vs.
THE STEAM'R GRANITE STATE.

Owen & Vose for claimant; Benedict, Burr & Benedict for libellant.

MARCH 29*th*, 1859.

John H. Brower sworn for libellant, and says:

I am wrecker and ship carpenter, &c., and own a vessel and have others; I have been in this business for 20 years; I know the barge Rambler, and have for 7 or 8 years; I am pretty well acquainted with the value of vessels in this port, and am often employed as appraiser; I remember the time she was sunk; she was worth from ten to fifteen hundred dollars before she was sunk; I should give that for her before she was sunk; she had iron in her before she was sunk; I did not raise her; I saw her at low water; I stood on her deck and took the iron out of her at the time; her sides and stern was all knocked away; she appeared to be all knocked away from going over the rocks, and one side of her stern was all knocked out; she could not have been repaired; I contracted to get the iron out of her after she was sunk, and what was overboard. I made a written contract, and the paper here shown and marked Exhibit No. 1 is the same; this was a reasonable and fair price contained in contract No. 1. This paper, marked No. 2, is the receipt for the money paid by Wetmore for the work I performed under the contract; I had the use of Mr. Wetmore's barge some 24 days for the purpose of raising the boat; the fair price for the use of the barge per
39 day, I should say was about six dollars; I raised all the iron that was there that could be raised; we could not find any more.

Cross-examined by Mr. Owen.

I do not know when the barge was built; I suppose she was about 100 tons more or less; we commenced fishing up the iron on Christmas day; I did not notice the last day; I know we were 4 weeks at it; we worked about

24 days at it; I think it is worth $6 per day for running days. During that time Mr. Wetmore did not use it, except that the barge was used to take the iron over to the yard and bring it back; the $459 50, No. 2, I can't tell the exact day it was paid; it has been paid; I can't tell when the last payment was made; he paid me in two or three payments; the bill was not all paid on the day it bears date; they have knocked the barge all to pieces to get her out of the slip; she was at the foot of Adams st., Brooklyn, when we commenced taking the iron out; I have owned vessels; never barges; I do not have any yard; we counted the number of bundles we raised; the bill contains the number he raised.

William M. Pease sworn for libellant:

I am a steamboat man; I picked the barge up the next morning after the collision—the same morning I mean—at about 6 or 7 o'clock; I found
40 her at the foot of Grand st. as near as you could say; she was on the rocks; the iron had carried her head down under water; her stern was all that could be seen; I put a line to her and towed her down to the foot of Jackson st.; I then called on the owner, Mr. Wetmore, and he told me to tow her to the foot of Adams st., where the iron could be taken out; after we got her there we got a snatch block, and Mr. Wetmore got other men, and we hauled her up as far on the sand bar as we could.

Cross for claimants by Mr. Owen.

This bill has been paid; I can't say the day; it was pretty near the day; I can't tell exactly when it was paid; it was paid at all events; it was not paid on the day of its date; the barge did not lay high and dry at low tide when we hauled her out; she laid in Mr. Wetmore's own slip, at the foot of Adams st.

Redirect examined.

I don't know what would be a fair price for the extra labor at the time we hauled her up; the extra labor I should say was $3, and the snatch block was broken, and that would be $2.

John McCreery for libellant, says:

I am a lighterman, and acquainted with the value of barges in Dec'r, 1857; I have known the Rambler ever since Mr. Wetmore owned her; the
41 fair market value of her was worth more to Mr. Wetmore than to me; I think in Mr. Wetmore's business he could not not supply her for $2,000; I mean in this market; I judge so by the price I have to pay for boats.

Cross by claimants.

I don't know exactly how long he has owned her; some 5, 6, or 7 years; I don't know how old she was; she was what was called an old barge; I don't know what she would fetch at auction; I do not know her market value in any other way than as I have stated; she would be worth $2,000, because she was the kind of boat suited to his business; there are other persons in the city engaged in the same business as Mr. Wetmore; she was formerly a topsail sch'r, mast cut out and made in the shape of a barge; don't know who Mr. Wetmore purchased of; I am engaged in the lightering business; I use deck lighters with sails; this lighter of Mr. W. did not carry sails; I had seen her frequently before this collision.

Redirect resumed.

If I had wanted to get such a boat, I don't think I could have got one for

$2,000; I would have to pay $2,000 for a lighter of half her capacity; I have seen on her, I think, 130 to 140 tons of railroad iron on her, if my memory serves me; I have seen a great deal of the barge; she was used to carry iron, coal, &c.

42 Ami Robbins for libellant:

I am in the iron business; I was requested in 1858 to appraise some iron that was damaged for Mr. Wetmore; Mr. Gardner appraised it with me; it was at Mr. Wetmore's in Brooklyn; it was the iron raised from this barge; the letter here shown me, and marked Ex. No. 4 is a letter from Mr. Wetmore, and on the back in the memorandum of the amount of damage sustained by the iron that was raised, $5 per ton.

Cross-ex.

Mr. Gardner is the other man who approves it, and is the other of the firm of Gardner & Bro., foot of Grand st., and I am of the firm of Eggleston, Buttell & Co.; we examined a pile of iron that was said to contain so much as raised from the lighter.

Arthur Russell sworn for libellant, says:

I was capt. of Rambler; we had 1,232 bundles of iron on board of her when she was struck; I saw her after she was raised; she was stove all to pieces; could not be repaired.

Cross-ex'd by claimant.

We tow her up after we got the iron out.

Redirect.

The stuff or pieces was worth nothing.

It is here admitted by claimants' counsel that Henderson & Kernochan would prove that Mr. Wetmore had paid them $375 50, according to the bill marked Ex. No. 5.

43 John Earle for libellant:

I know of some canvass that was lost; one piece I know of was worth $10; don't know about the other; there was two trucks lost worth $10. Interest from 29th Jan'y, 1858.

Matthew Gardener produced and sworn on the part of libellant:

I am ship carpenter; have been such fifty-odd years; have some barges and lighters, and built them; I was well acquainted with the Rambler; I was at work on her the summer before she was lost; the floor timbers of the barge was very sound and tough; I had work on her some 6 or 7 years; she had clamps in her and screw bolts and blunt bolts; she was braced every way she could be, for the purpose of carrying freight on deck; she had two extra bilge kelsons in her, and upon that braces to support the weight of the iron on deck; I say she was a very strong vessel; I have one that cost me two thousand dollars, that would not do half the hard work she would; I do not recollect what the amount of my bill was.

Q. Please to state the market value of that barge in Dec'r, 1857, for a man who wanted to use such a boat.

(Obj'n; overruled; ex'n)

A. The market value puzzles me to state what it is; I should judge as she was, to any person who wanted to use her for stone ballast or iron,

44 about $1,500; she was quite capable of carrying what the common lighters would not; I have got 2 barges worth $2,000 each, and she would carry more than they would.

Cross-ex'd by Mr. Owen.

I built barges; my yard is in John st., between Jay and Pearl and Adam st., in Brooklyn; I can't tell the age of the Rambler; she was not a new vessel; her timbers were hacmatac; I can't tell the measurement of the Rambler; she would carry about 120 tons; she had no mast, bowsprit; her floor timbers were sound; her upper timbers were pretty good; when she was not good I had made her good; when I repaired her there was rotten timber; I put in short pieces; I saw her in the dock after the collison; I was asked if I could repair her after the collision; the captain who went with her asked me if I could repair her, I said no; if I did repair her, it could cost something to do it; I was not asked for the purpose of repairing it; she had been wrecked and ripped all to pieces, or I could have repaired her; I never went on board of her after the collision, except after her sides were all stripped off, when I stepped on board of her.

Q. What was the market value of that vessel the day before the collision ?

A. Providing Mr. Whetmore had gone into market to have bought her about $1,500.

45 *Redirect.*

My repairs were all on the top.

John Earle sworn for libellant, says:

I have been capt. of the barge Rambler; I have been on her back and forward 4 years; I saw her after the collision; the first I saw her after the collision was at Adam st. dock; she was pretty well torn up; her starboard bow was part smashed up; her stern was all cut to pieces; the Rambler's bottom was pretty good and strong; I don't mean to say that it was all perfect, but pretty good; she was capable of carrying 130 or 140 tons on deck; that was about what we put on her; I suppose she could carry 160 tons; she carried 140 or 150 tons; the fall she was injured she carried it with safety; as a general thing, she was employed in carrying iron.

Cross-ex'd.

She carried iron and chalk and coal; no other kinds of merchandise; I believe I was examined on the trial; I helped to break her up in Adam st.

Peter S. Wetmore being sworn for libellant, says:

I am son of Mr. Wetmore; I knew the barge Rambler; she was employed in the lighterage business; in the business of carrying iron, which we are engaged in; she was pretty constantly employed.

46 Q. State what this boat could earn in a year, her net earnings.

(Obj'n by respond't; sustained; ex'n.)

John H. Brower recalled for libellant:

I know Frank Anderson. I swore the other day he don't follow the business of wrecking; he is a police officer; he used to follow boating on board of vessels; when the pier 8 broke in he took the job to get up the iron; he could not get along with it himself, and he came to me to assist him; there was 80 of pig and 125 tons of wrought iron. I had a vessel and he had none, and he called on me; so I helped him, and he took another job to get up lead, and he could not do it, and he came to me to assist him. He is not a man of any pecuniary responsibility. The piece of wood produced here

I took out of the Rambler's hold; it is a piece of the steamboat wheel broken by the collision, and the iron is also part of the wheel.

Cross-ex'd.

I went and assisted him; he had not tools. I don't know that he ever worked for Wetmore; he worked with Bell as a hand in getting up iron; we worked together on shares; he had not tools to do a job with, and it was not his business or trade; sometimes he would get a job in the dock outside; he had nothing to do with it; the Rambler was at the end of the dock, and it was a dangerous place to lay, and I would not take it for $18 per ton
47 again in that dock at this time of the year, because it is a dangerous place to lay at the end of a pier. I would not leave my little vessel there over night; the Rambler would stand a good deal of knocking. I don't want to say anything about his honesty. We are good friends.

Divine Burtis, being called for libellant, says: I have followed building and repairing vessels about 25 years. I am not an owner of vessels; I have been at times. I remember the barge Rambler; I repaired her in July, 1857; I put her bottom in good order; her top was not so good; when I finished her I thought she was sufficient for his purpose; he told me to repair her if I thought I could make her answer his business; I think her bottom timbers were pretty sound for an old vessel; they were not perfectly sound but pretty sound.

Q. To what amount did you repair her?

A. I overhauled her bottom and examined her to see whether she was good and worth repairing. I ripped off all the old sheathing and examined her bottom, and put in a few pieces, and caulked her bottom up to the wail, or about as far up as she was usually loaded, paid the seams, and grained the bottom, and then put on felt, and then the sheathing over that; that is about what I done. I don't think I put in much new timber, for I
48 don't think it needed much. I put in pieces.

Cross-ex'd.

I did not take off her planks; if there had been any I thought wanted to come off, I should have taken them off; the first thing was to see whether she was worth repairing. This was in July, 1857, I done the work. I think in some places her timbers on the upper works were not sound. I saw her after the collision, though she was pretty much under water, or a great share of her. I could not tell how she was; some vessels is poor at a young age and some at an old age. I did not know that Mr. Gardiner done any work like mine. Her condition was not such after this collision that any collision would have broken her to pieces without it was a heavy blow. The bottom of a vessel is less liable to decay than the top when they run in salt water. I don't know the value of such a vessel; I don't know that there is any value to old vessels; it depends upon what a man may want it for. I should have thought she was worth $1,000 to any person who wanted her, after I put the repairs on her.

Q. If you had got to sell her in market what do you suppose she would bring?

A. She might fetch $200, and she might fetch $1,200; a person who did not want her might give $200, and one who wanted her $1,200. Good
49 old vessels sell very low sometimes, and sometimes they bring a good price. Nothing around her bottom ought to be done to her, after I repaired her, in two years with good usage.

George Olney, a witness produced and sworn this 1st day of June, 1859,

on the part of the libellant, says: I am agent of the Union Lighter Co.; I have owned, bought, and sold lighters, barges, &c., in this port, and know their value in this port, I suppose; I know the barge Rambler. I first knew her in summer of 1857; I had her in the company's employ; we had her and the others of Mr. Wetmore's that summer; and about the time she was repairing, the next season, I examined her with the view of purchasing her.

Q. In the fall of 1858, what was the value of the Rambler?

A. I offered him directly twelve hundred dollars for the Rambler. I wanted to buy his two other boats, they were iron; he gave me to understand he did not want to sell them; that they were more valuable to him than they would be to me, and did not fix any price on them that I remember, and then I offered him $1,200 for the Rambler, which he refused; she was worth the money to us; I could not get a vessel of that capacity for that sum that would answer our purpose.

Cross-ex'd.

50 We have contracts with New York, Brooklyn, and other gas companies, to lighter them coal, iron, and other heavy goods. The smallest boat that we have in our employ is 190 tons; we have old vessels razeed. I should think it was along in August that I offered that sum for the Rambler. I went to Mr. Wetmore to see if I could get the barges; I did not make him an offer for the iron; his views and mine were so far apart that I did not make him an offer; I asked him if he would take $1,200, and and he told me he would see about it.

Q. What would that vessel have brought in Dec'r, 1858?

A. She would have brougt $1,200, for I would have given it myself; there is a certain number of men engaged in the lightering business that will always give pretty near her value; I can name several of those men; one I knew of by the name of Babcock, Jersey City, and another by the name of Dick, that lighters for Manhattan Company, and there is a man that lighters for the Kerosine Oil Company who is in the market for vessels, and also a man by the Dye; these men are all in the market to purchase these kinds of vessels; if there is an old vessel up for sale you will always find them in the market to purchase them.

Redirect resumed.

51 Q. What could the Rambler have been replaced for in Dec'r, 1858, in this market?

A. That would be a difficult matter to answer. You might find an old vessel that you could get for $5 or $600, and then it would cost $5 or $600 to refit her for the business.

Endorsed: District court; David W. Wetmore *vs.* the Str. Granite State. Copy libellant's testimony on first reference.

52 U. S. district court.

DAVID W. WETMORE
vs.
STEAMER GRANITE STATE.

Testimony on the part of the respondent, on the 1st reference, April 5th, 1859.

Mr. Owen calls as a witness Samuel Sneden, who, being duly sworn says: I am a ship-builder in this city, and have been for sixteen years. I am accustomed to repairing and building vessels. I have owned interests in ves-

sels and am accustomed to estimate the value of vessels, and I know their value. I was requested to go and examine the barge Rambler, and I did go and examine her; she lay at the foot of Adams st., Brooklyn; Capt. Peck requested me to examine her; I examined her soon after the collision; I found her on the bottom partly out of water; she was unsound; she was what we should call rotten; from information given here by Mr. Wetmore she was twenty-seven years old; she had no mast or bowsprit; I suppose she had been a sloop.

Q. What was that vessel worth at the time of the collision?

53 A. I should think from one hundred to one hundred and fifty dollars; she would have sold for less than the sum I have mentioned in market.

Cross by libellants.

I have not bought such a vessel as that is; I never sold such a vessel; I never have seen such a vessel bought or sold; she was made of oak wood principally. I was down to her some two or three times; I was down at this time when I examined her some hours; her decks were not under water at the time I examined her; the iron had all been taken out at this time; it is difficult to say how much she would have contained on deck, that is of weight; I should think forty tons would be as much as she could carry on deck and float with; that is as much as she ought to have, and more too.

Redirect ex.

I have purchased sloops all rigged, complete, and as large as she was for one hundred to one hundred and fifty dollars; her tonnage was from eighty to ninety tons; she ought not to have more than forty tons in her; in fact she ought not to have any in her; she was not capable of sustaining more than forty tons.

William G. Hackstaff, for respondents, being sworn, says: I am an old sea capt., and am acquainted with ships and vessels and know the value

54 of them. I saw the barge Rambler; I saw her first in Brooklyn; I examined her; I found her laying into the slip there; I went on board of her and examined her beams, and found them completely rotten; the ends of beams and knees were rotted off; I never saw so rotten a mass of wood afloat in my time of forty years. She had no iron in at that time; she had a foot or two of water in her; she had no bowsprit or mast; I went forward and aft, and looked at her beams, and the strength of the vessel in all respects, her rotten part was generally all over, &c.; no one was with me at this time when I examined her. I don't think I would have taken her as a gift before the collision, unless I could burn her up for her iron. It would depend upon circumstances as to what she would be worth. If I wanted her to carry sand or something like that, perhaps she might be worth one hundred dollars, for any other use I should think her valueless. If a man owned her he would have to be his own insurer, as no man would be so foolish as to put anything as freight upon her. In my estimate I have assumed she was whole in all respects, only defective in her material, being rotten. When the beams of a vessel are all rotted off, as hers was, the slightest pressure would break her in.

55 *Cross-ex.*

I am a planter now; raise tobacco; I am not in any ship now; when I went to sea I was master of vessels and a steamer; I went down at the request of Captain Peck, who told me there had been a collision.

Adjourned April 13th, at 3 o'clock.

APRIL 21st, 1859.

Testimony on the part of respondent.

William Thomson, being sworn on the part of respondent:

I was formerly one of the marine surveyors of this port; I was surveyor some eleven years, and was in an insurance office some ten years, where I was an inspector, and forty years I was a seaman; during the time I was surveyor, and up to the present time, I have been in the habit of surveying vessels with a view of estimating their value; I surveyed a barge which lay in the dock at the foot of Adams st., in Brooklyn, in 1858; I saw no name on her; she had no spars of any shape or sails; there was a good deal of water in her; I went on board of her and examined as to the state of the wood and the iron fastenings, and found the wood very much decayed and the
56 iron r usty and decayed—that is, the original fastenings; if I remember, she had three or four iron rods that went across to sustain her; they were fastened on the outside; if she had been put in the market as she was I should say $50 would have been a hard bargain for any one who had bought her; but for the purpose of a lighter, perhaps, she would have brought $250; I mean this estimate would be when she was up and as I suppose she was before the injury. I had seen her laying up at Poillon's shipyard several years after she was condemned.

Cross-ex.

I saw her up at Poillion's yard every day most. I suppose this was in 1847 or 1848. She lay there as a condemned vessel. I did not go on board of her then. I don't know the tonnage of the vessel. If she was 103 tons register, I would not say she could sustain 50 tons on her deck unless she was well shored up, and she would have to be well shored up to sustain that. I judge of her value from my opinion of her soundness and strength. She was not a strong vessel or she would not have spread all open.

Joseph Tinkham, for respondent:

I have been a marine surveyor for 15 years, and am accustomed to
57 appraise the value of vessels. I went with Capt. Thomson to see this barge at the time mentioned by him. We found her in Brooklyn, at the foot of Adams street. She was partially filled with water, and in a very much of a decayed state in various parts. I took some parts of the rotton wood. The timbers forward and aft were rotten; so much so, that you could take pieces of the timber and grind it up in your hand. I never saw her before that time to my knowledge. I saw that she had been injured in some way.

Q. What, in your opinion, was that barge worth if she had not received the injury by collision which you observed?

(E'xn.)

A. In my opinion she would not have been worth more than $100 she was so decayed. I think that she was not worth repairing.

Cross-exm.

I observed some little fracture. Don't know exactly what it was. Did not see her floor timbers. There was some ice in her at the time.

Edward F. Williams, on the part of respondent:

I am a ship-builder in Brooklyn, and repairer of vessels. I saw the barge

Rambler once at the foot of Adams st., Brooklyn. I did not go on
58 board of her. I went on the dock 'longside of her. She was very much decayed and broken up. She was not worth repairing. She could have been repaired. I considered that the vessel was completely worn out, she was so rotten. Her iron was rotten. I should think she was worth a very trifling amt. as she lay—perhaps $25.

Q. Suppose that barge to have been afloat and employed around the harbor, what, in her decayed state, would you consider her worth?

(Ex'n)

A. From one hundred to one hundred and twenty-five dollars.

Cross-ex.

I should think she would carry from 50 to 60 tons on deck if properly shored up. I judge of her value from my supposition of her strength and soundness.

Re-direct.

Q. Is it or not a correct criterion by which to judge of a rotten or decayed vessel whether she is capable of sustaining in the water a cargo?

(Ex'n.)

A. I should think not. You cannot judge of a vessel by what she would carry.

Stephen H. Simmons, for respondent:

59 I am a ship-carpenter, and am in the habit of repairing and building vessels. I saw a vessel I supposed to have been the Rambler. I was instructed to go and examine her. She looked like a rather old vessel All parts I could see out of water was rotten. I could see down to her bilge. About half of her was out of water. I should think she was a condemned vessel, like old vessels I have seen hauled around on the beach. She was not worth repairing. Any repairs upon her would have been thrown away. I think, as she laid, you would have to put a hundred dollars on her to get any one to take her away.

Q. Suppose that vessel, in her decayed state, had heen afloat around the harbor, what would she have been worth?

(Ex'n.)

A. I suppose if a man had business for her she might have been worth $250 or $300; it depends upon what he wanted her for. At public sale she might have brought something and she might have brought nothing. It would depend upon what she was wanted for.

Cross-ex.

I did not go on board of her.

John F. Williams, for respondent:

60 I am a ship-carpenter. I was brought up a ship-carpenter. I am a broker now. I left the ship-carpenter business in 1854. I was ship-carpenter 20 years. I have seen the barge Rambler. I did not go on board of her. I went within ten feet of her. She was about half out of water. She was rotten; I should think about half rotten. Her tops sides were out of water. Her timbers were rotten I think I have a knowledge of the value of vessels. She was broken apart when I saw her. I should say she would have been worth one hundred and fifty dollars had she been afloat in her rotten and decayed state.

Cross-ex.

I could not say how many of her timbers I saw. I went down to examine her, but did not go on board. I can't say how many rotten timbers I saw. I won't swear I saw three rotten timbers.

61 MAY 5th, 3 o'clock.

Mr. Owen, respondent's counsel, calls as a witness Francis Anderson, who, being duly sworn, says:

I am now one of the police officers of this city. I have been formerly engaged in working around the harbor. I have been engaged in taking up iron in this city. I know of the bark Rambler. I applied to Mr. Wetmore and Captain Peck to get the job of getting up the iron. The barge lay at the foot of Beekman st., in this city. It was some two or three days after the collision I had a conversation with Mr. Wetmore. I went down and asked him if I could get the job of him to get it up. He said he could not tell me exactly about it. He asked me what I thought it worth to get it up. I told him I would get it up for six dollars per ton. That included delivery on the dock. There was nothing said about where I was to deliver it. Mr. Wetmore said nothing about it, because he had not seen Capt. Peck, and we went down to see him, but could not find him. I saw Mr. Wetmore the Tuesday following, and he then said there was another man engaged to take it up.

Q. Who was to furnish the lighter or vessel to be used in getting up the iron?

62 (Obj.; ex'n.)

A. I was, of course.

Q. What, in your opinion, would be a fair price in getting up the iron out of the dock if the vessel used for that purpose had been furnished by Mr. Wetmore?

A. If I agreed to take the iron up, and the man furnished the lighter, I could do it cheaper; what the difference would be I don't exactly know. It would depend upon the size of the vessel. It would make a difference of a dollar per ton whether a vessel was furnished or not. I should think it would take two or three weeks in taking up eleven hundred bundles of iron. I should say the barge Henry was worth six dollars per day to take up the iron.

Cross-ex.

The length of the time employed in getting up the iron would depend upon the weather, &c. I have raised a great many hundred ton of iron. I can remember five jobs I have had in the said river. One of them was in the North River. One was for Coleman, in West st. It was bar pig and bundle iron. I think it was in pier 8, North River. This was iron sunk in the dock. The dock broke down. I got a man to help me get it up. I

63 don't think the remark I made to Wetmore was in his wagon. I said I thought it could be got up for six dollars. I don't know that Mr. Wetmore knew me. I was then following the wrecking and grappling. I found out who the vessel belonged to, and went to Mr. Wetmore. I did not know how much iron there was.

John A. Boyle, a witness produced on the part of respondent:

I am a license and enrolment clerk in the custom-house in this city. I have examined the books, and find her license is dated August 16th, 1852. David C. Wetmore was the owner. It would expire in one year from that

time, and does not appear to have been renewed. If it had been renewed my books would have shown it.

Samuel S. Goodman, sworn on the part of respondent, says:

I did know the barge Rambler; have known her from nine to ten years; have seen her frequently during that time. I think it is about eighteen months since I saw her last. She looked pretty well knocked up. That trade knocks the decks up pretty well. I thought she might be worth two or three hundred dollars. I own two barges like this of Wetmore;
64 that is, I did own them at that time. I know the value of barges. I saw she was very much knocked to pieces. I did not examine her much.

Cross-ex.

I owned four vessels at the time; two barges and two sloops. I saw some rotten wood on the decks. Did not go into her hold. Have bought a number of vessels like this. I got some of them through Mr. Wetmore. We carry stone, and anything we can get.

Latimer G. Moody, sworn for respondent, says:

I am master of a sloop on the river. I owned the barge Rambler when she was a schooner. I think I owned her in 1850. I sold her to Mr. Wetmore. I sold her with the privilege of taking the sails and rigging off from her. I took them off.

Q. What did you get for her?

(Obj. by respondent; sustained; exc'n.)

Adj'd to May 19th, 3 o'c.

65 U. S.

WETMORE
vs.
GRANITE STATE.

MAY 19th, 1859.

Stephen Glover for defendant:

I am marine inspector for insurance companies; have been such since 1851. I am acquainted with the value of ships. I have been accustomed to value ships. I examined the barge Ramble. She lay at the foot of some street; I forgot the street. It was at Adams st. I examined her in January, 1858. We had two surveys of her—one on the 5th and one on the 8th—with Capt. Cobb and Burgess, marine surveyor. She was open so we could see her clearly. Her stern at low water was entirely out of water. She was very unsound. Her timbers were both rotten and worm eaten. She was not sufficiently sound to justify repairing. Her timber would not hold bolts or fastening. She appeared to have had a guard around on the outside of her. They had a new pair of bitts, a breast-hook, and some knees to support the bitts. She was out of line, completely out of line. As she lay there we could have determined how she was before the collision. If I knew as much about her as I know now, I would not give anything
66 for her. Don't think she would pay for breaking up, that is the labour. We all came to the same conclusion. Neither of us would take her to break her up. The materials would not bring sufficient to pay the labor.

Cross-ex.

My business is principally inspecting ships, brigs, &c.

Russell H. Post, for defendant:

I am a shipping and commission merchant. I have followed the sea most

of my lifetime, and have owned and commanded lighters from fifty to one hundred tons. I have always for the last thirty years been interrested in repairing vessels, &c. I saw the Rambler after the collision, and knew her before I went on board of her after the collision in Brooklyn. I found her original timbers all decayed; there was but little about her sound. There was a new guard on her, and filled in between the original timbers with little chocks, into which they drove fastenings for the guard. The vessel was very much out of shape owing to her weakness. She was a perfect wornout and decayed vessel. She was what we call a hulk. Decks
67 were entirely adrift, all open. I don't know how to put any value on her at all. I should not think she was capable of transporting any kind of goods; she could not be repaired because she was so decayed that there was no place to commence. A good one would not have been hurt by the blow. The blow struck her on what we call her quarter, eight feet back. The bucket struck the barge by her wheel and made impressions in her side because she was so rotten. The injury from the collision could have been repaired if she had not been so rotten. If she had been a good vessel she could been repaired for some $15 or $20.

Cross-ex'd.

If a strong vessel had been struck by only her buckets she would not have been injured to the extent of $15 or $20. I mean to say that no sound timber was broken by the striking. I never saw her bottom timbers.

Adj'd to May 26, 3 o'c.

69 Dist. court.

WETMORE
vs
GRANITE STATE.

JNEE 8th, 1859.

Parties appear and respondent's counsel calls as a witness—

Richard Poillon, who, being duly sworn, says: I am a shipwright, and have carried on business in this city some 20 years, and carries on the largest business of repairing vessels in the city. I know Mr. Wetmore, and have done business for him. I saw the barge Rambler after the accident at Mr. Wetmore's place in Brooklyn. I went there at the request of Capt. Post. I examined her; she was not worth repairing because she was very old and defective. Her timbers and plank were decayed. I observed her floor timbers. The floor timbers are the last that decay in a vessel generally. I am not aware of any demand for old vessels of the kind of the Rambler in fall. I am not aware that there was any market value in Dec., 1857, for a vessel of the kind of the Rambler. I should appraise her value at that time at $500. Those vessels are sometimes of use for particular purposes, and will answer in place of better vessels.

70 Q For what could a vessel of the character of the Rambler be replaced at that time?

A. Condemned hulks are generally sold very low. A vessel of 400 or 500 tons we have sold for four or five hundred dollars.

Q. How much at that time would it have cost to build a vessel capable of doing her work?

A. I should think for about $4,000 with rigging and outfits, and without this the mere hull I should say would cost about $2 500. I know George Henry, the witness who has been examined for libellant.

Q. What was George Olney's pecuniary responsibility in 1857?

(Obj. by Mr. Benedict; sustained; ex'n.)

Cross-ex'd.

I do not build large ships, but repair large and small ships. We never have owned this class of ships. I never bought vessels of this class except one. I do not know whether there was a market value for vessels of the kind of the Rambler in Dec'r, 1857. I went on board of the Rambler. I went with Capt. Post. I was there twice, once with him and one alone. I do not know of my own knowledge what business she was employed in. I do not know how much she could carry. I could gauge from the size of the vessel.

71 Francis Anderson, recalled on the part of respondent:

I know John H. Brower, he is a wrecker. I employed him to get up some lead and iron; on one occasion I took him in on shares. That was the first job we worked together, and the next time I took him on percentage for himself and boat, we worked together. I don't know that there is any more difficulty in getting up iron at the foot of Beekman street than any other. I have got up iron, &c., for insurance companies. Have worked for Astor Mutual Ins., Co., Corn Exchange, Co., for Delafield & Baxter, and gave satisfaction. I made the offer to Mr. Wetmore, to take up the iron because I thought I could take it up for that. When I had any work of that kind I always hired a vessel.

Cross-ex'd.

My offer was to get up the iron for Mr. Wetmore, for six dollars per ton; that is, what I could get up. I intended to contract to get up all that was there. I made no offer in writing. I made the offer on Saturday and did not see him again until Tuesday. He said he was going out of town. I think I gave him my number; I can't say for certain whether I did or not. I may have given it to him or I may not. I can't say as Mr. Wetmore knew me when I spoke to him on Saturday. I don't know as the end of
72 Black Ball pier is occupied any more than any other pier when shipping comes in.

Redirect resumed.

I don't remember whether Mr. Wetmore, asked me where my place of business was; if he asked me my place of business I told him. I can't say whether he asked me for reference or not. I think I offered to give him references. The reason I did not call on him was that he told me he was going out of town. I have seen the barge Rambler around town.

Recross.

I would not say positive whether I gave him reference or not; but my opinion is that I did give him references. I am pretty near certain he asked me where my place of business was, but I won't be certain.

Samuel Sneeden recalled by respondent:

The Rambler was not worth repairing. You can repair anything; she was so old and rotten and smashed up, she was not worth repairing.

Adjourned to the 17th at 3 o'c.

74 At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the 20th day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Samuel R. Betts, district judge.

DAVID M. WETMORE
vs.
THE STEAMER GRANITE STATE, HER TACKLE, &C. } Vol. 14, page 505.

Charles W. Newton, esq., U. S. commissioner, brings into court the report made by him in the above-entitled cause.

On motion of Benedict, Burr & Benedict, proctors for the libellant, it is ordered that said report be confirmed, unless exceptions are filed thereto, within two days from this date.

75 Filed 20th day of September, 1859.

76 U. S. district court.

DAVID W. WETMORE
vs.
THE STEAMER GRANITE STATE.

In pursuance of a decretal order made in the above-entitled cause, on the 19th day of March, in the year of our Lord one thousand eight hundred and fifty-nine, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of damages occasioned by the collision in the pleadings mentioned and to report the same to this court with all convenient speed, I, Charles W. Newton, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties, and have taken and examined the testimony offered by said parties, and do find that there is due to the libellant the sum of two thousand and eighty-six dollars and twelve cents for the damages occasioned by the collision aforesaid. ($2,086 12.)

All of which is respectfully submitted.

Dated Sept. 13th, 1859.

C. W. NEWTON, *U. S. Comm'r.*

77 Endorsed: 14, 505, U. S. dist. court. David Wetmore *vs.* the steamer Granite State. Commissioner's report. Am't due, $2,086 12 Sept. 13, 1859.

Filed Sept. 20th, 1859.

78 *Claimants' exceptions.*

U. S. district court.

DAVID W. WETMORE
ag'st
STEAMBOAT GRANITE STATE, &C.

The claimants except to the commissioner's report, made herein and dated September 13th, 1859, as follows:

First. For that the commissioner has allowed the libellant, for Brower & Lounsbury's bill the sum of $459 50, whereas he should be allowed and reported therefor a much less sum.

Second. For that the commissioner has allowed the libellant, for the use of the barge while getting up the iron, the sum of $144, whereas he should have allowed and reported therefor the sum of $130.

Third. For that the commissioner has allowed the libellants, as the value of the barge, the sum of $850, whereas he should have allowed and reported therefor a much less sum.

Fourth. For that the commissioner has allowed the libellant the sum of

$2,086 12 as the amount of damages sustained by him by reason of
79 the collision, whereas he should have allowed and reported a much less sum therefor.

OWEN & VOSE, *Cl'ts' Proc's.*

Endorsed: 14, 505. U. S. district court. The steamboat Granite State, &c, *ads.* David W. Wetmore. Claimants' exceptions to comm'r's report. Owen & Vose, cl'ts' proctors.
Filed Sept. 22d, 1859.

80 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the 31st day of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Samuel R. Betts, district judge.

DAVID W. WETMORE
vs.
THE ST. BOAT GRANITE STATE, &C. } 14, 505.

This case having been heard on exceptions taken by the claimants to the commissioner's report, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the report of the commissioner in this cause estimating the value of the said vessel at $850 be set aside, and that the cause be remitted for a revaluation of the vessel upon the principles set forth in the decision of the court.

SAM'L R. BETTS.

81 Filed the 31st day of December, 1859.

82 *Evidence on the part of libellants.*

U. S. dist.

WETMORE
vs.
THE GRANITE STATE. } JAN'Y 28th, 1860.

Mathew Gardiner; I am ship carpenter and lighter owner; I have been in the lightering bbsines fifteen years and have been the ship carpentering business twenty-five years. I am acquainted in the lightering business and the vessels employed therein; I knew a vessel named the Rambler, owned by Mr. Wetmore; I done a good deal of alterations to the Rambler.

Q. State what alterations you made in that craft tending to make her fit for the purpose of carrying heavy weights upon her deck.

(Objected to by Mr. Owen. Objection overruled, and exception.)

A. First I put in what we call false kelsons, one on each side very near the middle. Those kelsons were put between the main kelson and bilge, and then a strong piece put right along that by the beams, one bolted down
and the other up, and then strong stantions put in some five or six
83 foot apart nearly from end to end, and then she was stanchioned all along the main kelson from end to end up to the deck; then I put some clamps all along under the beam ends bolted to the sides. The stanchions stood in the middle up and down on the kelsons, and then they were lipped in on the beams on the top and bolted. There was pieces put on the old skin, what we call false timbers, and then the floor was put on, raising up the floor some distance. I never knew of any such craft as these made after these alterations; I never have seen one. I have been accustomed to

buy and sell vessels in this harbor. I never knew of such a craft as this bought or sold in this harbor; I don't know of any use for such a craft in this port except by Mr. Wetmore. I knew this vessel in December, 1857.

Q. What, in your opinion, was her value at the time of this accident, in 1857?

A. To Mr. Wetmore—I can't form it in any other way—for his business I should judge her to be worth about fifteen hundred dollars.

Q. If you had been employed by Mr. Wetmore to replace her, for what sum could it have been done?

(Obj'd; over'd; except'n.)

84 A. I know I would be rather loth to take it at 1,400, but I should have refused to have done it for fourteen. I should have asked fifteen hundred dollars.

Cross-examined.

I believe I have testified before in relation to this vessel; I made the alteration, I should suppose, three or four years ago; I can't tell exactly. I made the alterations probably two years before she was lost; it might be more; I can't state exactly. That was not the last work I done upon her before she was lost. The alterations I done was at the foot of Adams street; I have timber there but no yard; I done the work with a man to help me, who is now dead. I believe this vessel was a brig or a large schooner before I altered her; she was a barge before I altered this last time; I used to call her a hulk; she was a barge or something fitted to this business, to carry iron, chalk, or iron heavy goods. Mr. Wetmore has several other lighters to carry heavy goods; they are similar to this. This vessel differed from the barges and lighters around the harbor in the stanchions and things fixed in her; she had a bow, a stern, and a deck and keel side bilges; there was very little of the outside of her altered from what she was when she was a brig. I mistake in my answer; she had been sheathed on

85 the outside from end to end, and well laid with felt on the side betwixt the sheathing and the bottom, and two strengthening pieces put on the outside from end. This was not done by me; it was done after I made those other alterations. What I have now stated are the difference between her and those, and by Mr. Wetmore and other lighters around the harbor. She was called the old Rambler; I called her the hulk; our people called her one thing and some another.

Q. What did they call her?

A. She was commonly called the Rambler; I don't know as I can give any other name for her. There was not a rotten timber in her; not what you may call a rotten timber; there was spots of rot in her, but generally sound and good in her timbers. I saw her after the collision at the foot of Adams street. She could not have been repaired from that injury; she could have been repaired, but it would not have paid.

Q. When you say it would have cost fourteen hundred dollars to replace her and you would not have done it for less than fifteen hundred, what do you mean?

86 A. I mean if I had gone out and bought an old vessel and put those fixings in, I would not have ventured to have done it in the lump for less than fifteen hundred dollars.

Q. You don't mean, then, that you could have repaired the Rambler for that sum?

A. I never made any calculation to repair her. I saw it would not pay to repair her. I have bought two lighters within the last six years; not of this sort. I would not have had one if you had given her to me. I own two lighters. They are old vessels rebuilt, both of them.

Q. Was there not a buying and selling of these old vessels in the port of New York in December, 1857, and before and since?

(Objected to by Mr. Benedict, on the ground it should be confined to vessels like the Rambler. Obj'n over'd; exception.)

A. I never knew any one of the kind of the Rambler bought and sold in my life.

Q. What do you mean by the kind of the Rambler?

A. The easiest way I can clear that—I mean a thing fitted out in that way for carrying great weight, on her deck especially.

Q. What would this Rambler have brought in market on a sale in
87 Dec'r, 1857, before the collision?

(Obj'd by Mr. Benedict. Obj'd reserved.)

A. Who to?

Q. To any person at a public auction?

A. I can't decide. I tell you at one time I would not have her for my own purposes for a gift; and at another I tell you she would cost $1,500 to replace. She would not not be worth anything to me. I can't tell whether she would be worth anything to any one besides Mr. Wetmore or not.

Q. What was her value in December before the collision?

A. Again, I tell you to Mr. Wetmore she was worth fifteen hundred dollars.

Q. Can you state what her value to any other person was?

A. I have stated I would not give a dollar for my own purposes.

Adj'd to Feb'y 3d, at 3 o'c.

FEB'Y 3d.

Parties appear, and by counsel for libellant calls as a witness on his part—

Devine Burtis, being sworn by libellants, says: I am a shipwright, and nave been engaged in that business some thirty years; have been some
88 interested in vessels. I have bought some and sold some vessels. I have built and repaired vessels. I have carried on the business some 27 years. I am acquainted with character of shipping in New York, what it is engaged in, and what composed of. I know a craft by the name of the Rambler, owned by Mr. Wetmore. She was a hulk when Mr. Wetmore owned her. All the name I ever heard of was the Rambler. I do not know what to call her. I don't know what you would term her. She was used for lightering, *for lightering*. I know that was the business he used her for. I have seen old hulks. I never saw one fixed up as she was, as I know of, for that business. I never knew of any such a one being sold in this port. She was the only one I ever knew of. If I wanted to buy such a thing, I don't know that I could; I don't know where I should look for one; there is no market for such a thing to my knowledge. If there was a market for such a thing I might have known it. I don't know exactly how to answer that, whether I should have known whether there was a market for such a thing or not. If such things were bought and sold in this market I would have known it. I am acquainted with the cost of building and repairing and altering vessels, and of
89 the materials put in them, and the labor required, &c.

Q. What, in your opinion, was the value of this craft in Dec'r, 1857, before the collision?

(Obj'd to by Mr. Owen; overulled; exceptions.)

A. A person who had use for such a vessel as that, I suppose she would be worth from one thousand to twelve hundred dollars.

Q. For what sum could that craft have been replaced if destroyed in December, 1857?

A. If you had hit upon a vessel of that sort you perhaps might have re-

placed her for from one thousand to twelve hundred dollars. I mean if you could have come across an old vessel you might have replaced her for that sum. My meaning was that if you could have come across an old vessel you could fix her into that shape; you might have done it for that sum. You could not have bought or built a new one for that sum.

Q. What would it have cost to have replaced her with a new one?

A. About three thousand dollars.

90 *Cross-examined by Mr. Owen.*

I have been examined before in this case on the former reference. This hulk had a keel, bows, sides, and decks. She had been once a foretopsail schooner or brig. Her masts were gone; her bowsprit, rigging, and sail were gone, and I suppose other articles in the sailing vessels required to equip them. She was a mere hulk. She had a hold and deck; also a rudder. I don't know that I have seen any lighters of that class around the port. I have seen iron on barges, and on lighters with sails. A lighter is a small vessel built that carries one sail as a general thing. A barge is built different from a sail vessel. They are flatter; don't have any keel. They are not in the shape of a sail vessel. Old hulks are converted into barges sometimes; that is, old steamboats. I have known also vessels to be cut down to carry coal. I don't know that I have ever seen any more than two or three cut down, and that is to carry coal. I have known old sloops to carry ballast about with sail; sand or stone.

Q. Wherein did the Rambler differ from any old vessel?

A. In the way of fitting up for his purpose for carrying iron. I
91 presume any old schooner could be fitted up in the same way. I don't know whether any other is engaged in the same lighterage business around this port as Mr. Wetmore. Mr. Wetmore's business is in lightering iron from his ship to his yard.

Q. Have you ever known old hulks to be bought and sold in this port?

(Obj'd by Mr. Benedict; reserved.)

A. I have heard and known of old vessels to be sold to be torn up, and have known vessels to be sunk too, and sold to be refitted again.

Q. Is not every old bulk worth something to be torn up?

(Obj'd to; reserved.)

A. No, sir; some old vessels are worth but little, and some might not be worth sufficient to tear up no more than for firewood.

Q. When is a hulk not worth sufficient to tear up?

A. When they are old and iron fastened. Old iron is worth but little, and the labor is too great. When they are copper fastened, then they are worth enough to tear up, because the copper is worth something. All the value in the vessel would be the copper. A vessel like the Rambler, to be worth
92 ten or twelve hundred dollars, ought to be a tolerable fair vessel in her bottom. She ought to be of sufficient strength to do work with certainty. If she was decidedly rotten she would not be good enough to carry iron.

(Last part of answer objected to by Mr. Owen as not responsive to the question.)

I repaired this vessel in July, 1857. Mr. Wetmore fetched the vessel down to me, and asked me to look at her, and if I thought she was sound enough and good enough to do his work to repair her. I had repaired her before. She had done his work for five years. I did examine her, and made some repairs.

Q. What was the value of the Rambler in the early part of December, 1857?

A. If she was worth anything she was worth what I say for a person having business for her.

Q. What was she worth in market?

(Obj'd; reserved.)

A. That is a pretty hard question for me to answer; it's owing to whether there is a buyer for her who wanted her. Articles won't fetch what they are worth always.

93 Q. Is not the value which you have above placed upon her what you consider her worth to Mr. Wetmore for his use?

A. That I can't tell exactly what she was worth to him, but a man having business for such a vessel that, in my opinion, was what she would be worth. You can't fit up a vessel of her description for less money.

Q. Do you mean to say that Mr. Wetmore could have sold her for the price you have named?

A. I don't know that he could. I don't know anything about it. I can't say.

Adj'd to Feb'y 8, at 3 o'clock.

FEB'Y 8th, 1860.

John McCrery, being sworn on the part of the libellant, says: I am a lighterman; have been in the business about fifteen years I am acquainted with shipping and craft about this harbor. I know the craft formerly owned by Mr. Wetmore, known as the Rambler. She was a hull of a vessel, or hulk, or something of that kind. I know of no other craft like her; not exactly like her. I do not know of any such vessels being bought and sold in this market. I don't know of anybody who has use for any such
94 craft in this port except Mr. Wetmore. Mr. Wetmore owns a yard for the stowage of railroad and pig iron.

Q. What, in your opinion, was the value of the Rambler in Dec'r, 1857?

A. As for the cost of the vessel, she cost a good deal more than *than* what she would be worth to me. The value of her to me would be nothing at all. To Mr. Wetmore she was worth fifteen hundred dollars.

Q. For what sum could a person have replaced her in Dec'r, 1857?

A. I think it would have cost all that. She was not fit for general lightering business. Mr. Wetmore is not engaged in the lightering business no further than his own business is concerned.

Q. How do you get at the sum of fifteen hundred dollars which you have mentioned?

A. By buying a second-hand vessel and fitting her up in the same w

Cross-examined.

I am engaged in the general lightering business—every kind of merchandize. I have no barges. There are persons engaged in the transporting sand, coal, &c. Mr. Olney lighters coal for gas companies. There
95 is a man by the name of Doughty who carries ballast stone and sand. Capt. Bertham is another. We all lighter iron when we can get it. I mean all the lightermen. There are quite a large number of lightermen in this port. The business of lightering is quite large. I knew the Rambler before Mr. Wetmore owned her, and ever since.

Q. Why could not the Rambler be used to carry coal, ballast, stone?

A. Mr. Wetmore had her altered for to suit is business. He had two bilge streaks put on each side—one on each side and three rows of stanchions, which would make it rather inconvenient to shovel stone or coals out of her. She was little deeper in the hold than vessels used for that purpose usually are. She was as sound as an old vessel would be expected

to be. I don't know how old she was. (The libellant admits that the fore-topsail schooner out of which this craft was made originally built in or about the year 1827.) I don't know that there was a market for a vessel of the kind of the Rambler.

Q. Would she have brought anything upon a public sale in market?

A. I don't know.

96 Q. Why do you suppose she was worth to Mr. Wetmore the sum of fifteen hundred dollars?

A. There is two reasons for thinking so; one is that she cost him more than that; and the other is that she had that kind of that value to him. I have known some of his bills he paid for repairs on the boat. I did know what he paid for her originally. I don't remember now. I have no means of knowing what she cost him than what I have stated. Mr. Wetmore confines himself more to one class of lightering—that is iron. Mine is a more general class of lightering. I do a good many jobs of lightering iron, railroad, pig, and bar, and cast iron. I have no lighters specially fitted for carrying iron. I carry the iron in any of my lighters when I have the occasion.

Q. How do you know what she is worth to him for his use?

A. Mr. Wetmore had work enough to keep her pretty well employed at a profitable business. Mr. Wetmore owned three lighters at that time. I think I was examined before Mr. Newton before in regard to the Rambler.

Re-direct.

97 When I speak of my knowledge of the cost of repairs on this vessel I mean altering, fitting up, and repairs. I mean what the cost of altering her from her old condition would have been. I am constantly employing men to do work about vessels, and know what work of this kind cost in this port.

Adjourned to February 15th, at 3 o'clock.

98 U. S. district court.

WESTMORE vs. GRANITE STATE } For libellant.

February 17th, 1860.

John Earl for libellant says: I have been boating in this harbor for the last 8 or 10 years. I am in Mr. Wetmore's employ now. I have been master of barges on the river. I was master in Duant and Lathrop's line. I knew the craft called the Rambler, owned by Mr. Wetmore. She had been a schooner or brig in former times, and she was altered from that to a barge or anything you please. She was fitted up for the express purpose of carrying her cargo on deck, (from an old vessel,) with the exception of little; we might put a little below—but a little—when we had a full cargo. She was not adapted to carrying anything in her hold.

Q. How did this class differ from a class of vessels called barges?

A. Barges are generally built for the purpose of carrying their cargo below when there is nothing in the way for putting the cargo below, no stantions to prevent—there was a difference in that. This old

99 craft was all full of stanchions for the purpose of supporting her deck, so that you could not put cargo in below without it costing more than it was worth to put it in and out. Stanchions were all put in her stationary.

Q. How are the stanchions in barges?

A. The barges that I am acquainted with—and I have been through most all of them—have a row of stanchions from stem to stern, and both sides are clear.

Q. Was this craft fitted for carrying perishable goods of any kind?

A. No, sir.

Q. Could she be used for general lightering business?

A. No, she could not.

Q. What was she good for?

A. She was fitted up expressly for carrying iron on her deck. She was capable of carrying 150 tons of iron on her deck at the time she was run down by the steamer. The fall between the month of August and when she sunk I have known her to carry 150 tons of iron on her deck. There was a little of it below in the main hatch where all could put a little to keep her stiff. Generally speaking she was constantly employed in carrying iron up to the time she was lost Mr. Wetmore is not in the lighter-
100 ing business generally. He only keeps lighters for his own business. I am acquainted with the various craft used in this harbor in connection with shipping. I don't know as there is a vessel like her in this harbor of her description. There are old vessels used for carrying ballast for ships.

Q. How did this craft differ from those old vessels?

A. She was fitted up for the purpose of carrying her cargo on deck.

Q. Who has any use for such a craft in this harbor except Mr. Wetmore?

A. I don't know of any one who has use for such a craft in the same business except Mr. Wetmore.

Q. Are you acquainted with the cost of fitting up such a craft?

A. I am acquainted with the bills he paid.

Question repeated.

A. Yes.

Q. What are your means of information?

A. By the amount of work required to put a craft like her in such a condition.

Q. What would it cost to replace the Rambler as she was before she sunk?

A. Mr. Wetmore could not replace her for less than twelve or thirteen hundred dollars.

Q. Did you ever know of a craft like her to be bought or sold in this harbor?

101 A. No, sir.

Cross-examined.

I have had the command of this barge at times. I have been on and off of her for 4 years. I have put cargo on to her and out of her, and took her around the harbor where she was owned. I had charge of her as captain during those four years, during the four years before she was sunk. When there was no captain for her I would go on her. I usually carried iron on her, and have carried chalk. I have never carried sand or stone on her. I suppose she would be about seventy-five or eighty feet vessel. I could not tell the exact length of her beam, but suppose she was twenty-four or twenty-five feet across the top of the deck. There was a main deck and one hatchway about midships. I suppose the hatchway was about four feet in length and three or four feet wide, nearly square. The depth of her hold was about eight feet. She had a rudder, bows rounded a little. I was not with Mr. Wetmore when he purchased her. Don't know how

long Mr. Wetmore has been in the business. He has been in it, I suppose, fourteen or fifteen years. He had this vessel when I went to him.

102 Q. When did he make the overhauls and put it in the stanchions referred to?

A. The overhauls were made on this vessel before I went there.

Q. How do you know what it cost to make these alterations and put in the stanchions?

A. I know by the amount of work that was done on them. I think there was either five or six rows of stanchions put in fore and aft; some of them was further apart than others; some would be three feet and four feet and five; I should think there would not be any more than five feet apart. This vessel was well fitted up for lightering iron. Any person engaged in that business would find her useful. There are other persons in the city of New York engaged in litering iron. Mr. Boyer is in that business. He does not have his vessel fitted up in the same way. Most any one will lighter iron who can get the chance to do it. This vessel is fitted up. You could carry stone, chalk, anything that was heavy you could carry on deck. A vessel ought to be sound enough to carry the same cargo she carried, in order to have her fitted up for that price.

Q. How sound ought she to be?

103 A. I would want a vessel that was worth repairing, in order to fit her up and have her *and have her* worth what the Rambler was. I never have bought or sold these kinds of vessels, or any kind of barges. I never have owned any; I have always been captain or having charge of the barges. I never heard of any old hulks being bought or sold in New York. I have never known of any old condemned vessels being bought or sold in New York. I have heard of barges being bought and sold. I did hear that a man wanted to buy this boat. I was examined before Mr. Newton before, and also on the trial. I did not help to load this vessel, at the time she was sunk. I was present at the time. Don't know how much iron she had on at the time. When she had a full cargo, a heavy load on, we put ten or fifteen tons below; but it was seldom. In getting at the price, I suppose it would cost that amount of money to replace her.

Q. Have you any other knowledge of what it would cost to replace her, except what you have stated?

A. No.

Q. Could or not Mr. Wetmore have sold the Rambler, if he had wished?

A. That I don't know.

Q. Have you any idea what she would have sold for if he had wanted to sell her?

104 A. I don't know of any market for anything of the kind. The only difference I know of her, wherein she was different from other vessels of the kind, was in the stanchions and pieces running along the side of the vessel to support the deck beams. One running along underneath the deck beams, on both sides; these pieces were about inches square, as near as I remember. The stanchions were different sizes; some would be six inches square, of almost any size and shape you would name. Some would be square, and some broad, and some round.

Re-direct.

She had iron rods running across her; her floor timbers were good; they were hackmatack wood. I never knew of any old hulk of any kind being sold in this harbor. Mr. Boyer would not keep such a boat as her, nor men engaged in such business as he was. They have sail lighters in their North River. Bargemen would not have any use for such a craft as she was.

John Forrest, for libellant:

I am kind of a man of all work for Mr. Wetmore, his foreman. I have been there eleven years. I know the craft called the Rambler,
105 Mr. Wetmore formerly owned. I am acquainted with the kind of craft, used about shipping in this harbor. I never knew of any craft like the Rambler in this harbor; she was got up for a specific business; she was fitted up expresly for carrying railroad iron, and all kind of irom from our own yard, for our own purposes. My impression is, that we loaded her at about the time she was lost, with from 130 to 150 tons; that was about her capacity. She was kept employed most all of the time. She was not cut out expressly for general lightering business. I am not aware that anybody in New York has any use for a vessel like her. I never knew of any such craft being bought or sold in this barbor.

Cross-examined.

Any party that has lightering makes it part of the business to lighter iron. The business of lightering iron is pretty large. I know at least a dozen or fifteen persons in this harbor who lighters iron and heavy goods; they generally own their lighters. I am aware of about 3 persons who are engaged in lightering sand and ballast. No one makes it their business exclusively to lighter chalk or coal. This barge could be used to lighter any
106 heavy substance. She could not carry dry goods or that like, because her hold was devoted to stanchions, &c. Her bulwarks were three and a half or four feet. I never heard of old condemned vessels and hulks being bought and sold in market, and don't, therefore, know what they would bring in market.

Re-direct resumed.

Of all the lightermen, I do not know of any who would want the Rambler, bacause she would not serve their purpose. No one in this port carry enough iron to employ the Rambler, except Mr. Wetmore.

Adj'd to Feb'y 27th, at 3 o'clock.

107 WETMORE vs. THE GRANITE STATE. } Ref. Sept'r 21st, 1860.

Russell H. Post, sworn for respondent:

I have been examined in this cause before *before* Mr. Newton. I have had great experience in building and repairing vessels for the past 25 or 30 years. I mean I have been engaged in superintending and making contracts for building and repairing vessels, &c. Vessels carrying heavy deck loads always have to be stiffened by extra stanchions, which are place one row on each side and one in the centre, making three rows. There is nothing in that which changes the market character of the vessel. I was acquainted with the Rambler.

Q. Counsel for the respondent here reads from the testimony of Mathew Gardner, as to what was done to the Rambler, and asks the witness what it would cost to do the work mentioned by Gardiner in his testimony.

A. It might have been done for $50 or less.

Q. Would that sum have fitted her up sufficiently?

A. It would with the condition of the vessel; her situation as to
108 age, and her condition. That much expense, I say, is all that ought to have been put upon a vessel like the Rambler, when you consider her age, condition, &c.

Q. You stated in your former examination that you could not put any value on the Rambler at all ; state why you could not fix a value to her ?

A. Because she was so rotten, worn out, and good for nothing.

Q. If the Rambler had been offered in market, and her true condition as to rotteness had been made known, could she have been sold in market ?

A. No, sir. I can't see how anybody would pay anything for her.

Q. Suppose that besides stating her condition, it had been stated that she was accustomed to carry cargoes around the port of New York, what effect would that have had in regard to her market value ?

(Objected; ex'n.)

A. That fact would not have altered her value if her condition had been known.

Q. Why not?

A. Because she was not capable of sustaining cargo.

Cross-examined.

Q. Suppose you were required to do to the Granite State what
109 Gardner stated was done to the Rambler, what could it have been done for ?

A. Fifty dollars, I think.

Q. How much timber would it require to put two kelsons into the Granite State ?

(Objected to ; ex'n)

A. It would depend upon how long they were.

John Schenck, sworn for respondent:

I am engaged in tow-boating around the harbor; have been in it off and on 12 years. I own a part of three boats, Young America, Sampson, and Gen'r Oniel. I knew the Rambler whilst she was owned by Mr. Wetmore. I have towed her. I was in the habit of towing her about three years steady. I remember hearing of her loss by the collision. It was about six months before the collision I was in the habit of towing her. I have seen her around the harbor, down to about the time she was lost. I have never bought or sold any barges. She was in rather poor condition, that is, the Rambler.

Q. Did you have any directions from Mr. Wetmore in regard to hauling her, owing to her condition.

(Obj'd; ex'n)

A. The condition was never mentioned.

Q. What was said ?

A. He charged me to be very careful in landing.

110 (Answer obj'd to.)

There is people buying and selling such barges around the port of New York; I don't know of any particular case of buying or selling barges at the time of the collision or any other time.

Q. Have you any knowledge as to the value of old vessels in the port of New York in the fall and winter of 1857 ?

(Obj'd ; ex'n.)

A. I have.

Q. What, in your opinion, was the value of the Rambler in Dec'r of that year ?

A. Not over one hundred dollars.

Cross-examined.

I have been in the hold of the Rambler while we were towing her; I was

in the hold more than once; I never examined her for the purpose of estimating her value; I don't know how old she was; I kon't know what amount of repairs and alterations had been put on her; I stopped towing her because they would not pay me enough; we had a talk or question about rates, and I stopped towing for Mr. Wetmore; all I had to do with this vessel was just to tow her around the harbor; I never bought an old barge or sold one;
and never bought an old vessel and had her altered to carry loads on
111 deck; I don't know how much alteration Wetmore made in her after
he bought her.

Samuel Sneden for respondent:

I have been examined before in this cause. I am in the habit of repairing as well as building vessels.

Q. Is it unusual or uncommon to put extra stanchions in vessels that are intended to carry deck loads?

A. No, sir.

Q. Would putting in and filling the hold reasonably full of stanchions for the purpose of sustaning the deck change the character of the vessel?

A. No, sir.

Q. What, in your opinion, would it cost to put in the kelson and everything mentioned in the testimony of Gardner as read to Mr. Post?

A. Forty or fifty dollars.

Q. What do you say she was worth fitted up, as testified to by Mr. Gardner, in December, 1857, before the collision?

A. From one to two hundred dollars; there are no *there are no* prices for such things.

Q. Was there not during the time referred to and is there not always a buying and selling of old vessels around the port of New York?

A. Yes, there always has been.

Q. Would or not the Rambler, fitted up as above-mentioned, be as
112 regarded as an old vessel and bought and sold as such?

A. Yes, sir.

Cross-examined.

I never saw the Rambler to examine her before the collision; I do not think the Rambler would have brought one to two hundred dollars at auction; I believe I recollect what was testified to by Gardner as having been put into the Rambler.

Q. State if what Gardner testified was put into the Rambler?

A. Side kelsons, with stanchions five or six feet apart, and inner clamps; he don't name anything further, I think.

Testimony offered of the various witnesses examined on the part of respondent on the former reference received, by consent of counsel for both parties, without objections, except as to competency and relevancy.

Adj'd to 28th, at 3 o'c.

Testimony on the part of libellant.

MARCH 15th, 1860.

Lawson Boyer, on the part of libellant, says: I am engaged in the lightering business; I commenced in that business in the year 1848; our firm do as heavy a lightering business as any one in this port; Woodruff & Robinson are connected with me in the business; we have lighters with
113 masts; first-class lighters; we carry general merchandise; I have seen the vessel called the Rambler formerly owned by Mr. Wetmore.

Q. State whether or no there is any market for such a craft as the Rambler.

A. I know of no market for a vessel of that kind, at least she would not suit our purposes; I don't recollect of ever hearing of a sale of such a craft as the Rambler, fitted up as she was; I know of no man in this port except Mr. Olney who would want such a craft as she was; I judge so from the fact that she is not fitted for the general class of lightering; I judge Mr. Olney might bid for her from the nature of his business, but I don't know that he would want her; I judged he might, perhaps, want her from the nature of his business; I am pretty well posted up in the way of lighterage; that is my business and nothing else; I know the most of the lighters; I know many of the persons engaged in the business; I am well acquainted in the lighterage business generally in this port.

Cross-examined by Mr. Owen.

We lighter iron and steel and one load of chalk, no ballast or sand; we carry our iron both in the hold and on deck when we carry any; we
114 lighter with sails; we have what are called lug-sail lighters; we have them built to order; I believe every boat we built was built for the purpose of lightering; the Rambler was what I would call an old hulk; I should judge formerly an old schooner or sloop, the mast taken out and the hulk left. I don't consider ballast men regular lightermen, and with the exception of these, I do not know of any lightermen who use old hulks except Mr. Olney, perhaps.

AUGUST 13th, 1860.

George Olney for libellant:

I am a lighterman in the port of New York; I am acquainted with the value of vessels in this harbor; I have bought and sold vessels; I am pretty well acquainted with the value of vessels; I was acquainted with a craft called the Rambler; I dont recollect the exact date she was run over, but I do pretty near; she was worth to me at that time just what I offered Mr. Wetmore for her.

Q. What could that craft have been replaced for in the situation she was in at the time she was run down?

A. That is pretty hard question to answer. If I could get a hull of that size for what I should value it, and the expense of fitting of it, to
115 somewhere from $12 to $1,500, that is, the hull and all would have cost about that, $12 to $1,500; I don't think there is any market, or was at that time, of a craft like her except among certain persons; I never knew of a craft like her, fitted up as she was, being sold or bought in this market; I offered Mr. Wetmore $1,200 for the Rambler.

Q. How do the few men who have use for such craft procure them?

A. Take a vessel and go to work and put the frame work into them to strengthen them; that is the only way I know of their being procured; this is done to strengthen the deck to hold up the load.

Q. What persons in this port have use for such a craft?

A. I don't of any one, except Mr. Wetmore and myself, who are engaged in that business, but there are three or four other persons who use old vessels like her previous to her being fitted up.

Cross-examined by Mr. Owen.

I have cantract with the gas co.; I transport coal, railroad iron, locomotives, and tenders, retorts for gas co.'s, and material for the Central Park;

chalk also; I was under the impression this vessel was destroyed in
116 the fall of 1858; I saw her the summer before the collision; I was on board of her then and wanted to purchase her then; she was then fitted up; I mean by fitting up that she was strengthened by frame work being put in her hold, stanchions and bilge kelsons; I was engaged in the same business at the time I wanted to purchase her, as I am now, except I did not lighter for the park; I don't know of any other persons who lighter the same kind of materials on deck as Mr. Wetmore and myself; there are other lighters who carry loads of heavy goods, but they don't carry their loads on deck; I bought all the vessels I own; I fitted them up myself; they were not fitted up when I bought them; I am an agent for the Union Lighter Co.; I was at that time; since then there has been a change; I am a sole manager of the concern now; there was a change by different stockholders coming in.

SEPTEMBER 14th, 1860.

William Petty sworn for respondents:

I follow the water; I have been engaged in the lightering business around New York; I have been in the business about 19 years; I have lightered iron, sand, stone, brick, and most everything that is lightered; I have
117 bought and sold lighters, and owned them; I have bought vessels which have been sunk and got them up; one vessel in particular I am speaking of now; I suppose I have a knowledge of lighters in this port; I pretend to know what a lighter is worth to me; there is a buying and selling of lighters in this port; I have seen the Rambler; I saw her once in the Walabout about 3 years ago, as near as I can recollect; we lay alongside of her; I went on board of her, that is, crossed and recrossed her several times; she lay inside of me; I did not take any particular notice of her; I saw that it was a hulk of a vessel that had been rigged into a sailing vessel previous to this; she had no mast at this time.

Q. What was she worth at that time in market?

(Obj'n; over'd; ex.)

A. I can't say what she was worth, but I would not be willing to give over three hundred dollars for her at that time; there is nothing unusual in putting stanchions in these old vessels, that is always done; that is done in any vessel, good or poor, putting stanchions under decks; if we have no centreboard we generally have a row of stanchions in centre and on each side; that is a common thing with those deck lighters, all that I have
118 ever seen or had; there is a buying and selling of that kind of lighters; there are more or less of old vessels bought and sold every season, that is, lighters; the fact of a vessel having the stanchions in the centre and on the side would not, I should consider, change her character; I don't know how many rows of stanchions this vessel, the Rambler, had in her; I am a ship carpenter by trade; I have always done my own work for eighteen or nineteen years, and have fitted up these old vessels; it would cost to put in three rows of stanchions in a vessel, to make her a deck lighter, not to exceed fifty dollars, and that if oak kelsons, one put in the side to strengthen the vessel, it would be common rough work.

Q. What, in your opinion, would it have cost to have replaced the Rambler in December, 1857?

(Obj'n; over'd; ex.)

A. According to the way I have bought and sold old hulks, I could have replaced her for three hundred dollars, and made pretty good commission at that; that is, according to what I saw of her at that time. There is hardly any difficulty in buying old vessels in this port at any time.

119 *Cross-examined.*

I reside in Hampstead, Long Island; I have lived there nine years, and have been engaged in the lightering business for 19 years in the city of New York and around New York. I have carried back from Haverstraw to New York, coal, &c., from one part of the city to another; carried pig iron from one part of the city to another. I can't say I own any lighters now; I sold one a few days ago, and have I bargained for another; I have never owned any open lighters without a deck; when I speak of a deck lighter, I mean a lighter with a deck; I mean if we have a deck on her, we carry a part of the load on deck and a part in the hold; I don't think there are any lighters built exclusively for carrying the load on deck, and not in the hold. I think I saw the Rambler three years ago this summer; it was about this time; I asked a man, who was pumping the Rambler when we lay alongside of her, what hulk that was, and he told me the name; I did not go down in her hold. I have bought and sold fourteen old vessels within nineteen years; one of them was a sunken vessel; the others were all in working
120 order, common vessels around the river fit to carry chalk, iron, &c., and flour, if you would put it in tight barrels, so it would not get wet. The $50 expense of fitting up a vessel I have spoken of, would depend upon what kind of a vessel she was; I think the expense of fitting up a hulk would vary very much, oweing to how she was fitted up. I could fit up a vessel for fifteen dollars, with stanchions fit for service. If he needed to be replanked, &c., I could not do it for fifteen dollars; nor fifty dollars if she required replanking. I don't know how the Rambler was fitted up; I never was in the hold. I think I never carried any railroad iron.

Re-direct resumed.

I could have bought a lighter of 80 or 100 tons, that was fit to do any kind of work, in December, 1857, even to carrying flour in the hold in bulk, that is, it would be so dry, for the sum of fifteen hundred dollars, and they would be capable of carrying deck loads.

Oct. 9th, 1860.

Divine Burtis for libellant, being sworn:

Q. State the value of the work you did upon the Rambler in July, 1857, for Mr. Wetmore.

121 (Obj'n; over'd; ex'n.)

A. Four hundred and three dollars and four cents.

Q. What was the value of the work you did on the Rambler at the time she was first fitted out for Mr. Wetmore's business?

(Objected; overruled and question allowed as rebutting to the evidence produced by respondent, as to what the fitting up cost; ex'n.)

A. The amount was in the neighborhood of five hundred dollars; it don't vary but a very little from that.

Cross-examined by Mr. Owen.

I should think the first fitting up was as long ago as 1853 or 1854; it is so long ago I could not tell you exactly where the fitting up was; it was all about her, I think; I think longest part of the work was outside; the work I spoke of as being done in July, 1857, was outside work.

Mathew Gardner, recalled by libellant, says: I put the stanchions and kelsons on the Rambler.

Q. State the value of the work done on her, as you have described previously.

(Obj'n; over'd; ex'n.)

122 A. I judge it anyhow to be worth $300; I forget whether I done some caulking on her in 1857; I do now recollect I done some caulking on her, and put a piece in her stern, about the month of September, 1857.

Q. What was the value of that?

(Obj'n; overruled; ex'n.)

A About $91.

Cross-examined.

The work I spoke of as being worth $300, was done at two or three times; I can't tell when the first was done; the last was done, I believe, four years before she was lost. I made the stanchions chiefly of oak; they might some of them be of yellow pine; I can't tell how many feet I used without my books; I can't tell how many feet of pine timber I used without my books. Mr. Wetmore found the timber for the caps and kelsons, and most of the stanchions; I could draw every stanchion in her; I have looked it over a great many times in my mind, before I came here; I have thought over these things a great many times; I can't tell how many days' work I have done on her. The value of three hundred dollars was what I put upon her inside to carry iron. I put up three rows of stanchions fore and aft;

123 I should suppose those stanchions were six feet apart; two kelsons were put in, say about a foot wide and ten inches thick; the stanchions were put up strong rough. I have frequently put in, but not in the way those were put in; I have put stanchions in vessels for the last fifty years. Stanchions are usually put in on the main kelson, under the main beams; some are slopped in and some with shoe; in the case of the Rambler, they were put in with shoes; a few of the stanchions were put in the Rambler in the kelson under the main beams, so far as it was like those in any other vessel. I can't recollect how many main beams was in this vessel.

Re-direct resumed.

Q. What was the size of the top-beam overhead, put in by you?

A. I think that was about nine by five or six, as near as I can tell.

Q. What would be the value of the new timber you put into one of the kelsons?

(Obj'n; overruled; ex'n.)

A. I believe it was about 50 feet long; every foot was worth 40 cents per foot.

(Respondent's counsel here offers to read and refer to such portion of the libellant's testimony given on the former reference as he may think

124 advisable, treating the same as testimony on the part of libellant on the present reference.)

(Objected to by libellant's counsel, on the grounds that the testimony taken on behalf of the libellant are the former or first reference in this cause, cannot be considered as testimony on the present reference, only so far as he may produce or read the same on his part, under the consent of respondent's counsel.)

(Obj'n sustained; ex'n.)

Endorsed: U. S. district court. David W. Wetmore *vs.* the Granite State. Copy. Testimony on 2d reference before the U. S. commissioner. Owen, Gray & Owen, att'ys for respd't.

125 U. S. district court.

DAVID W. WETMORE
vs.
THE GRANITE STATE.

In pursuance of a decretal order, made in the above-entitled cause, whereby the former report made in this cause was set aside, and the cause was remitted to the undersigned, a United States commissioner, for a revaluation of the vessel named in the pleadings, I, Charles W. Newton, the commissioner to whom the matter was again referred, do report that I have been attended by the proctors for the respective parties, and after taking and examining the evidence offered, do find that the value of the vessel named in the pleadings was, at the time of the collision, one thousand dollars; at which sum I have revalued the vessel, in accordance with the principles laid down in the decree, remitting the same for a revaluation.

All which I most respectfully report.

CHAS. W. NEWTON, *U. S. Com'r.*

Dated Nov. 12, 1760.

Endorsed: U. S. district court. David W. Wetmore *vs.* the sb. Granite State Co. Commissioner's report.

126 U. S. district court.

THE STEAMBOAT GRANITE STATE, &C.,
ads.
DAVID W. WETMORE.

The respondents except to the commissioners report (second) herein, dated Nov. 12th, 1860, as follows:

First. For that the commissioner has erroneously reported that the value of the vessel therein mentioned was at the time of the collision $1,000, whereas he should have reported the same to have been of much less value.

Second. For that he has not revalued the said vessel in accordance with the principles laid down in the opinion of the court and in the decretal order made therein remitting the case to him.

Third. For that the commissioner in his revaluation adopted an erroneous rule in ascertaining the value of said vessel.

Fourth. For that the report of the commissioner is not sustained by the evidence.

Fifth. For that the commissioner erred in excluding evidence offered by the respondents in reference to such value.

Sixth. For that the commissioner erred in receiving incompetent and irrelevant testimony on that subject on the part of the libellant, not-
127 withstanding the respondent's objections thereto.

Seventh. For that the commissioner erred in refusing to receive and consider as part of the testimony on which he was to revalue the said vessel, the testimony of the libellant taken before him on the former reference as to the value of the said vessel.

OWEN, GRAY & OWEN, *Resp'd's Proct's.*

Endorsed: 14, 505. U. S. district court. David W. Wetmore *ads.* steamboat Granite State, &c. Resp't's excep'ns to comm'r's second report. Owen, Gray & Owen, resp'd's proc's.

Filed 17th Nov'r, 1860.

128 At a stated term of the district court of the United States of America for the southern district of New York, held at the United

States court-rooms, in the city of New York, on Wednesday, the first day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable district judge.

DAVID W. WETMORE
vs.
THE ST'BOAT GRANITE STATE, &c. } 14, 505.

This case having been heard on exceptions to the commissioner's report on this re-reference taken by the claimants and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, unless a stipulation be filed with a clerk of this court adjusting the causes amicably within ten days from the date of this decree, that a decree be entered confirming the exceptions to the report of the commissioner, and that it be referred to him anew to ascertain and report the marketable value of the barge, if she had any such value, or the cost of reparations upon her necessary to restore her to the value she had when collided against by the steamer, or to report specifically the amount of injury inflicted upon the libellant by reason of said collision.

(Signed) SAM'L R. BETTS.

129 Filed the first day of May, 1861.

130 *3d reference.*

U. S. district court.

WETMORE
vs.
GRANITE STATE.

MAY 22, 1862.

Hugh McEwen, a witness produced and sworn on the part of libellant, says: I have been engaged in the coasting and fishing business in this and the old country. I am now a porter with Francis McDonald & Co. I know the Rambler. I had charge of her when I was with Mr. Wetmore some three years. I went to Mr. Wetmore's in the year 1835. I am mistaken, I mean 1845; nine years ago. The Rambler was fixed up by having a kelson, and another kelson on that, and also a kelson on each of her sides, and stanchions from her bilge up, one straight and one angling off to the deck; and straight stanchions from the other kelsons. The stanchions I should say would average four feet apart, from the whole length of her. I never saw any other such craft as that before. I have seen all kinds of craft in this harbor.

Cross-examined.

I came to this country nine years last April. I worked for Mr. Wetmore about three years and three months. This vessel was fixed up for him at the time I worked for him. Mr. Gardiner was at work on this craft some of the time as a carpenter. The last time I saw the craft was after she had been broke.

Adjourned to May 27, 3 o'c.

MAY 27, 3 o'c.

131 Parties appear, and Mr. Benedict offers to read all the testimony taken on the part of libellant on the second reference, which is admitted by consent of resp't's counsel, subject to all objections made on his part at the time of taking the same.

Mr. Owen offers to read in evidence all the testimony taken by him on the part of respondent, which is admitted by consent of libellant's counsel, subject to all objections made on his part at the time of taking the same.

Mr. Owen here insists that all the testimony taken on the part of libellant on the first reference is to be regarded by the com'r as before him and to be considered in making up his report.

JUNE 4.

Parties appear, and after hearing counsel for respective parties on the question of the testimony taken on the 1st reference, com'r decides that he will only consider such testimony as may be taken on this reference, and such of the former testimony taken on the first and second reference as shall be by consent of counsel allowed to be produced and read on the present reference. The com'r holding this to be an entirely new reference. The application of respondent's counsel to use the testimony taken on the 1st reference refused, except so far as the same or any portion thereof may contradict the testimony of the same witnesses whose testimony may have been read on this reference.

(Objected to by respondent's counsel;. exception.)

Mr. Owen here offers to read the cross-examination of libellant's witness taken on the first reference.

(Obj'd by libellant's counsel. Obj'n sustained, except the direct testimony of the witnesses is read in accordance with above rulings.)

132 Mr. Owen here offers the whole of the testimony taken on the 1st reference with a view to contradict the witness within the ruling above.

(Obj. to by Mr. Benedict. Objection overruled in accordance with previous ruling.)

Endorsed: U. S. district court. Wetmore *vs.* the Granite State. Testimony on 3d ref'ce.

133 United States district court.

DAVID W. WETMORE
vs.
THE GRANITE STATE.

This cause having been a third time referred to me for hearing, I have again fully examined such of the former testimony as the parties have seen fit to offer, together with some additional proofs on the part of libellant, and upon considering the same in accordance with the opinion of this court as laid down for my guidance, I have endeavored to keep in view the fact that I am directed to ascertain the value of the vessel at the time of the collision, and not her value for the purposes of Mr. Wetmore's use, and in so considering the testimony I have only weighed such as legally tended to show the market or real value of the vessel. I have, however, in considering the point of a market value encountering the same difficulty as on the former references. The whole tenor of the testimony to my mind is to the effect that the vessel was entirely unlike almost every other description of craft used by any one in this port, and not fitted or intended for general use, thereby rendering her almost entirely unmarketable. Such being the case, a sale at auction or in open market does not appear to me to be the proper or legal manner of ascertaining her real absolute value, as was held in

134 the case of John Graham *vs.* Meyer & Stucken, in the circuit court of the United States, where the value of three large ocean steamers were in question. Therefore, being unable to determine that there existed any market for the vessel in question, I have been compelled to ascertain her

actual or real value by some other method, and have, therefore, in accordance with the suggestion made in the opinion of the court, deemed it important in some degree to consider the actual cost of reparations and alterations to restore her to the value she had when collided against, and in so viewing the case I have entirely thrown out all such testimony as relates to her value for the purposes of Mr. Wetmore's use in the particular business in which she was employed by him, striving to keep within the principles of law as laid down for my guidance, which, in my judgment, are fully sustained by the opinion of the court in the case of Masterton *vs.* the Mayor, &c., of Brooklyn, (7th Hill, 72,) where Justice Nelson says: "If there was a market of the article in this case the question would be a simple one. As there is none, however, the parties will be obliged to go into the enquiry as to the actual cost of furnishing the article, &c;" upon which principle I have in a great degree governed myself in determining the value of the vessel. I do therefore report the actual value of the vessel at the time of the
135 collision at eight hundred and ninety-five dollars, together with the sum of two hundred and eighty-one dollars and ninety-two cents, being interest on the value of said vessel from the date of the collision to that of my report, amounting in all to the sum of one thousand one hundred and seventy-six dollars and ninety-two cents ($1,176 92.)

All of which is respectfully submitted.

CHAS. W. NEWTON, *U. S. Com'r.*

Endorsed: 14, 505. United States district court. David W. Wetmore *vs.* the Granite State. Commissioner's report on 3d reference.
Filed June 10, 1862.

GENT.: Within is a copy of the commissioner's report in this cause, which will be presented for confirmation at the opening of this court on the 10th day of June, 1862.

June 9, '62.

Yours, &c., BENEDICT, BURR & BENEDICT,
Libl't's Proctors.

To OWEN, GRAY & OWEN, *Cl'm't's Proctors.*

Order confir. nisi, one week.

136 U. S. district court.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE, &c.

The claimants except to so much and such parts of the third report of the commissioner in the above-entitled action as finds:

First. For that the commissioner has admitted and taken into consideration, in making up his said report, incompetent and improper testimony, and which, if excluded, leaves not sufficient evidence to sustain his report.

Second. For that the commissioner has erroneously excluded and refused to consider testimony taken before him on the first reference relating to the value of the said barge, and has erroneously refused to receive testimony offered on that subject, whereby the claimants have lost the benefit thereof, and a much larger amount of damages has been reported than the testimony, if it had been received and considered, would have justified.

Third. For that the commissioner has erroneously decided that there was no market value for the barge by which he could be governed in ascertaining the damages.

Fourth. For that the commissioner, in ascertaining the damages occa-

sioned by the collision, (in respect to the barge,) has adopted an erroneous rule, and has reported a larger sum than the testimony under the true rule justifies.

137 Fifth. For that the commissioner has not conformed to the directions contained in the order of reference and the opinions delivered in this case in regard to the measure of damage and the mode of ascertaining the same.

Sixth. For that the commissioner has erroneously reported the actual value of the barge of the said libellant at the time of the collision to be eight hundred and ninety-five dollars, whereas he should have reported a much less sum.

Seventh. For that the commissioner has allowed interest on the damages, whereas interest is not properly allowable in cases like the present.

Eighth. For that the report of the commissioner as to the value of the said barge is against the weight of even that portion of the testimony which he claims to have received and considered, which in truth shows such value to be much less than the sum reported.

Ninth. For that the report is in these and other respects erroneous and should be set aside.

OWEN, GRAY & OWEN, *Cl't's Proctor.*

Endorsed: 14, 505. U. S. district court. David W. Wetmore *vs.* the steamboat Granite State, &c. Exceptions to commissioner's report. Owen, Gray & Owen, cl't's proctors.

Exceptions overruled, and report accepted and confirmed. Let a decree be entered accordingly.

Feb'y 2d, 1863.

WM. D. SHIPMAN.

Filed 17 June, 1862.

138 At a stated term of the district court of the United States of America for the the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the second day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable William D. Shipman, district judge.

DAVID W. WETMORE *et al.*
vs.
THE STEAMBOAT GRANITE STATE, HER TACKLE, &C.

This case having been heard on exceptions to the commissioner's report herein, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the said exceptions to the said report be, and the same are hereby, overruled, and the said report be, and the same is hereby, confirmed.

And it is further ordered that the libellant recover in this cause the sum of eleven hundred and thirty-four dollars and sixty-two cents, together with interest thereon from the 13th day of September, 1859, and the sum of eleven hundred and seventy-six dollars and ninety-two cents, together with interest thereon from the 9th day of June, 1862, amounting in all to the sum of two thousand six hundred and forty-nine dollars and ninety-eight cents, together with their costs to be taxed, amounting in all to the

139 sum of dollars.

And it is further ordered that unless on appeal be taken from this decree within the time prescribed by the rules and practice of this

court, that the stipulators for costs and value pay into the registry of this court the amount of their respective stipulations, and that the clerk distribute the proceeds in satisfaction of this decree.

WM. D. SHIPMAN.

We consent that the decree heretofore entered herein be vacated, and that the within be entered in lieu thereof, and as of the same date

OWEN, GRAY & OWEN.

Endorsed: Vol. 14, No. 505. United States district court for the southern district of New York. David W. Wetmore *vs.* the s'b't Granite State, &c. Benedict, Burr & Benedict, proctors for lib'ts, 74 Wall st.

Final decree for libellants.

Filed the 14th day of Feb'y, 1863, as of 2d Feb'y, 1863, and to be entered as of that date.

U. S. district court.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE.

Please take notice that the claimants in the above-entitled action hereby appeal from the decree entered in the above cause to the circuit court of the United States for the southern district of New York, in the second circuit.

Dated New York, February 10th, 1863.

Yours, &c., OWEN, GRAY & OWEN,
Proctors for Cl'ts and App'lts.

To GEO. F. BETTS, Esq'r, *Clerk.*
BENEDICT, BURR & BENEDICT, *Lib'l's Proctors.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward J. Owen, being sworn, says that he did, on the 10th February, 1863, serve the foregoing notice of appeal upon Benedict, Burr & Benedict, libellants, at their office, number 74 Wall street, in said city, by delivering a copy thereof to and leaving the same with said attorneys at the time and place aforesaid.

EDWARD J. OWEN.

141 Sworn to before me February 10th, 1863.
[SEAL.] AVERY F. BROWN,
Notary Public N. Y. County.

Endorsed: 14, 505, 506. U. S. district court. David W. Wetmore vs. the steamboat Granite State. Notice of appeal.
Filed 10th Feb'y, 1863.

142 U. S. circuit court.

DAVID W. WETMORE, libell't and appellee,
vs.
THE STEAMBOAT "GRANITE STATE," &c., THE NEW Haven Steamboat Company, cl'ts and appellants.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of appeal of the above-named claimants and appellants re

spectfully showeth that on or about the 24th December, 1857, the above-named libellant filed his libel in the district court of the United States for the southern district of New York against the steamboat "Granite State," her tackle, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by the libellant to the barge "Rambler," by collision with the said steamboat.

That the claimants duly appeared and filed their claim in the said action, and entered into the necessary stipulations for value and costs, and on or about the 8th day of February, 1858, filed their answer to the said libel, praying, among other things, that the said libel might be dismissed.

That such proceedings were thereupon afterwards had in the said
143 action; that the same came on to be heard on or about the 18th day of January, 1859, in the said district court, upon the pleadings, testimony, and proofs adduced by the respective parties, and due deliberation being thereupon had, the said court made a decree in said cause whereby the aforesaid steamboat was adjudged to be in fault and condemned to pay the damages, and a reference was ordered to a commissioner to ascertain the same.

That the said commissioner afterwards, and on or about the 13th day of September, 1859, reported as due to the libellant the sum of $850 for the value of the said barge "Rambler," and exceptions being taken to the said report by the claimants, such proceedings were thereupon had that the said court sustained the said exceptions and remitted the cause down to the said commissioner for a revaluation upon the principles laid down in and by the decision of the said court thereon.

That the said commissioner afterwards, and on or about the 12th November, 1860, made his second report, whereby he reported as due to the libellant the sum of $1,000 as the value of the said barge, and exceptions being taken to the said report by the claimants such proceedings were thereupon had that the said court sustained the exceptions and again remitted
144 the cause down to the same commissioner for a new revaluation.

That the said commissioner afterwards, and on or about the 10th day of June, 1862, made his third report, whereby he reported due to the libellant the sum of $895 and interest as the value of the barge; and exceptions being taken thereto by the claimants, such proceedings were thereupon had that the said court overruled the said exceptions and confirmed the said report, and a final decree was thereupon entered in the said district court to that effect.

And these appellants are advised and insist that the aforesaid decree is erroneous in deciding that the said steamboat was in fault, and directing her to pay the damages, &c., inasmuch as the said collision was solely the fault of the libellant, and was not, in any degree, that of the claimants, and that the libel should have been dismissed, or if otherwise, the said commissioner should not have allowed to the libellant any sum for damages, or if any, a much less sum than that allowed to him.

Wherefore these appellants, for these and other reasons, appeal from the whole of the said decree of the district court, to be held in this district, and on the said appeal they pray that the said cause may be heard anew upon the pleadings and proofs in the district court, and upon additional proofs to be introduced in the said circuit court, and that the record and all
145 proceedings in the said cause may be returned to and heard anew in said circuit court, and that the said decree, and every part thereof, may be reversed with costs, or such decree thereupon be made as shall be just and proper in the premises.

OWEN, GREY & OWEN,
Proctors for Cl'ts & App'lts.

U. S. district court.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward J. Owen, being duly sworn, says that he did serve the foregoing petition of appeal in this action upon Benedict, Burr & Benedict, libellant's proctor, at their office, No. 74 Wall street, in said city, on the 10th February, 1863, by delivering a copy thereof to and leaving the same with said proctors at the time and place aforesaid.

EDWARD J. OWEN.

Sworn to before me February 10, 1863.

[SEAL.] AVERY F. BROWN,
Notary Public, N. Y. County.

146 Endorsed: 14, 505, 506. U. S. circuit court. David W. Wetmore *vs.* the steamboat "Granite State," &c. Petition of appeal. Owen, Grey & Owen, cl'ts & appell'ts proct's.

Filed 10 Feb'y, 1863.

150 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMBOAT "GRANITE STATE," THE NEW HAVEN Steamboat Company, cl'ts and appellants,
vs.
DAVID W. WETMORE, libellant and appellee.
} Bond on appeal.

Know all men by these presents that we, Henry J. Wright and Jonathan R. Peck, are held and firmly bound unto the above-named libellant, in the sum of thirty-five hundred dollars, to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas the above-named appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the sourthern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

HENRY J. WRIGHT. [L. S.]
JONATHAN R. PECK. [L. S.]
NEW HAVEN STEAMBOAT CO.,
By RICH'D PECK, *Ag't.* [L. S.]

Sealed and delivered, and taken and acknowledged, this tenth day of February, 1863, before me.

GEO. W. MORTON, *U. S. Court.*

151 UNITED STATES OF AMERICA,
Southern district of New York, ss:

Henry J. Wright and Jonathan R. Peck, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of seven thousand dollars over and above all his just debts and liabilities.

HENRY J. WRIGHT.
JONATHAN R. PECK.

Sworn to this tenth day of February, A. D. 1863, before me.
GEO. W. MORTON, *U. S. Com'r.*

Filed this 10th day of Feb'y, 1863.

152 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the 18th day of May, in the year of our Lord one thousand eight hundred snd sixty-three.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

DAVID W. WETMORE
vs.
ST'B'T GRANITE STATE, &C.

This case coming on to be heard on appeal from the district court—

Mr. Benedict reads testimony from apostles on behalf of the libellant and respondent.

Mr. Owen reads testimony from apostles on part of cl'm'ts and appellants.

Mr. C. L. Benedict is heard on part of libellants.

Mr. Owen is heard on part of appellants.

Mr. C. L. Benedict is heard in reply.

Cur. adv. vult.

153 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE, THE NEW HAVEN STEAMboat Company, claimants.

This cause having been brought to a hearing upon the appeal taken by the claimants from the decree of the district court entered herein, and dated the second day of February, 1863, after hearing Charles L. Benedict, of counsel for the libellant and respondent, and Edward H. Owen, of counsel for the claimants and appellants, and due deliberation having been thereon had, it is now ordered, adjudged, and decreed that the said decree of the district court of the United States for the southern district of New York, made and entered in this cause on or about the second day of February, 1863, be, and the same is hereby, reversed, and that the libellant recover nothing in this action, and that the libel herein be, and the same is hereby, dismissed with costs in the district and circuit courts to the claimants, to be taxed against the libellant, and that the claimants have execution therefor.

154 Circuit court of the United States for the southern district of New York, in the second circuit.

DAVID W WETMORE, LIBELLANT AND APPELLANT,
vs.
THE STEAMBOAT "GRANITE STATE," HER TACKLE, &C., the New Haven Steamboat Campany, claimants and appellee.

To the Honorable the Supreme Court of the United States:

The appeal of David W. Wetmore, the above-named libellant and appellant, respectfully shows that on or about the twenty-fourth day of December, 1857, the above-named David W. Wetmore filed his libel in the district court of the United States for the southern district of New York against the steamboat "Granite State," her tackle, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by him to the boat Rambler by collision with the said steamboat Granite State, in the
155 East River, in the port of New York, and that the said steamboat was seized upon process issued upon said libel and was discharged on the claimants filing their claim and entering into stipulations for costs and value, and thereafter the claimants duly filed their answer to the libel of the libellant, and such proceedings were had in the said cause that on the second day of February, 1863, a final decree was made and pronounced therein by the said district court, wherein it was adjudged that the said libellant recover against the steamboat Granite State, her tackle, &c., the sum of two thousand six hundred and forty-nine dollars and ninety-eight cents, together with costs to be taxed.

And that after such final decree the claimants and appellees duly appealed threfrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the 25th day of November, 1863, the said circuit court made a final decree in the said cause, whereby it was decreed
156 that the said decree of the district court be reversed with costs, and dismissing the libel of the libellant and appellant herein, which said decree of the said circuit court, is, as this appellant is advised, erroneous and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said supreme Court will proceed to hear the said cause anew upon the evidence adduced and such other evidence as may be produced on this appeal, and that the said decree of the circuit court and every part thereof may be reversed and a decree made affirming the said decree of the district court in each and every respect, or make such other decree as to the said Supreme Court shall seem just.

BENEDICT, BURR & BENEDICT,
Appell'ts Proctors.
E. C. BENEDICT, *Advocate.*

157 Filed Dec. 2, 1863.

158 Circuit court of the U. S. for the southern district of N. Y., in the second circuit.

DAVID W. WETMORE, libellant and appell'nt,
vs.
THE ST. BOAT GRANITE STATE, HER TACKLE, &C., THE New Haven St. B't Company, cl'm'ts and appellees.

Know all men by these presents that we, David W. Wetmore and Jacob S. Wetmore, of the city of New York, and Peter S. Wetmore, of the city of Brooklyn, and State of New York, are held and firmly bound unto the above-named claimants and apppellees, the New Haven Steamboat Company, in the sum of five hundred dollars to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 30 day of November, in the
159 year of our Lord one thousand eight hundred and sixty-three.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district New York:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

DAVID W. WETMORE. [L. S.]
JACOB S. WETMORE. [L. S.]
PETER S. WETMORE. [L. S.]

Sealed and delivered, and taken and acknowledged before me this 30th day of Nov'r, 1863.

W. D. JONES, *Notary Public*, 74 *Wall st.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

160 Jacob S. Wetmore and Peter S. Wetmore, being duly sworn, each for himself doth depose and say that he is a resident of the southern district of New York, and is worth the sum of one thousand dollars over and above all his just debts and liabilities.

JACOB S. WETMORE.
PETER S. WETMORE.

Sworn to before me this 30 day of Nov'r, 1863.

[L. S.] W. D. JONES, *Notary Public*, 74 *Wall st.*

[5-cent stamp.]

I approve of the above bond and the sufficiency of the sureties thereto.

S. NELSON.

Dec. 2, 1863.

Endorsed: U. S. circuit court. David W. Wetmore *vs.* the st'b't Granite State, her tackle, &c. Bond on appeal. Benedict, Burr & Benedict, libl. and app'lant's proctors, 74 Wall street.

Filed Dec. 2, 1863.

161 By the Honorable Samuel Nelson, one of the judges of the circuit court of the United States for the southern district of New York, in the second court, to the New Haven Steamboat Company:

Whereas David W. Wetmore, libellant in a certain suit against the steamboat "Granite State," has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of the claimants of the steamboat Granite State, who filed their security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first day of January, 1864, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 2d day of December, 1863.

S. NELSON.

162 Filed Dec. 3, 1863.

We admit due and personal service of the within citation on the New Haven S. B. Co., claimants.

Dec. 2d, 1863.

OWEN, GRAY & OWEN, *Cl'ts Proctors.*

Filed December 19, 1863.

1 Deposition of witnesses produced and sworn and examined on the 30th day of November and 29th day of December, in the year one thousand eight hundred and sixty-five, at the office of Charles W. Newton, United States commissioner for the southern district of New York, in a certain cause now pending undetermined in the Supreme Court of the United States, between David Wetmore, libellant, &c., *vs.* The Steamboat Granite State, &c., claimants and appellants, as follows; which said depositions are taken under and by virtue of the annexed commission. All of which is respectfully submitted.

[SEAL.] CHAS. W. NEWTON,
U. S. Commissioner named in the annexed Commission.

2 First. To the first interrogatory he saith:

A. My name is John Schenck; residence No. 136 Nassau st., Brooklyn. I am captain of a steam-tug.

Second. To the second interrogatory he saith:

A. I know Mr. Whetmore and some of the people connected in the *the* Granite State.

Fourth. To the fourth interrogatory he saith:

A. I have had eighteen years experience in navigation in the harbor of New York, and in mooring of vessels at the piers in said harbor.

Fifth. To the fifth interrogatory he saith:

A. It is the custom for them to lie there whenever they want to.

3 Sixth. To the sixth interrogatory he saith:

A. I never saw any light on any lighter or barge while lying at the end of a pier. It is very seldom you ever see a watch kept on a lighter or barge at the end of a pier, except there is cargo on them.

Seventh. To the seventh interrogatory he saith:

A. From my experience I should say it would not be necessary or proper for a lighter or barge moored at the end of a pier at night to carry a light. There is only one class of vessel that carry a light, that is, when at anchor in the stream, for the reason that a light on a vessel at the end of a pier might, in a dark or foggy night, be taken for a vessel at anchor in the stream, and vessels thereby might be induced to run into the dock.

4 Eighth. To the eighth interrogatory he saith:

A. I should not suppose it would be necessary to have a watchman on board of a barge or lighter moored at the end of a pier at night, for the reason a watchman could do no good. I don't know that it would be proper to have a watchman, as one could do no good.

Ninth. To the ninth interrogatory he saith:

A. No, sir.

JOHN SCHENCK.

Cross-interrogatories:

First. To the first cross-interrogatory he saith:

A. I have lived in Brooklyn thirteen years; I have known Mr. Wetmore ten years, and some of the other parties about twelve years. I was in New York in the fall and winter of 1857.

5 I was engaged in towing vessels around the harbor in the fall and winter of 1857. I was in my own business. I am now thirty-eight years of age.

Second. To the second cross-interrogatory he saith:

A. I have been heretofore examined as a witness in this cause on the part of Mr. Peck. I was in no way connected with the Rambler before her loss, except in towing her.

Third. To the third cross-interrogatory he saith:

A. My experience first commenced about eighteen years ago. I was engaged with tow and passenger boats. I was on the steamer Connecticut, the Hero, Cataline, Duncan C. Pell, King Philip, Nahanten, Norwalk, Charles Durant, Tempest, M. K. Wilson, and others, as engineer of some and captain of others; when I was

6 on Hero and Cataline I was employed by the captains of the boats; for the last ten years I have owned boats myself.

Fourth. To the fourth cross-interrogatory he saith:

A. I have not known or heard of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the night, to haul around into the slip at night and lie there over night; I have not known or heard of lighters or barges when lying at night at the end of a pier or in the slip, to have a light set or in any way displayed on them; I don't know that I ever heard or knew of a lighter or barge lying in a slip or at the end of a pier at night to have a keeper or watchman on board.

JOHN SCHENCK.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th of November, 1865, before

CHAS. W. NEWTON,
United States Commissioner.

7 First. To the first interrogatory he saith:

A. My name is Hugh Byrne. I reside at No. 330 Pearl st., in the city of New York. I am a stevedore.

Second. To the second interrogatory he saith:

A. I know Mr. Wetmore; none of the others.

Fourth. To the fourth interrogatory he saith:

A. I have no experience in navigating vessels. I have had an experience of fifteen years in the mooring of vessels at or in the piers in the harbor of New York.

Fifth. To the fifth interrogatory he saith:

A. It is the custom of lighters or barges in said port to come to the end of the pier or piers and take in cargo, and lie there until they would get their load in.

8 Sixth. To the sixth interrogatory he saith:

A. I never see a light on a lighter at the end of a pier in the port of New York in my life. I can't answer as to watchman.

Seventh. To the seventh interrogatory he saith:

A. I think it would not be right for a lighter at the end of a pier to carry a light at night, for the reason that a vessel bound up or down the river might take her for a vessel at anchor in the stream, and, trying to run inside of her run, into the dock.

Eighth. To the eighth interrogatory he saith:

A. That depends upon the man that own the iron.

Ninth. To the ninth interrogatory he saith:

A. All I could say more is, that a watchman on a lighter or barge at night, at the end of a pier, could not prevent a collision.

9 Cross-interrogatories:

First. To the first cross-interrogatory he saith:

A. I have resided in New York all the time since June, 1849. I have known Mr. Wetmore, I should think, twelve years. I was in the city of New York in the fall of 1857, engaged in the steavedore business, in the employ of Thomas Dunham or Dunham & Diamon. I was in their employ since 1849. I am thirty-nine years old, to the best of my knowledge.

Second. To the second cross-interrogatory he saith:

A. I have not been examined as a witness heretofore in this cause. I was in nowise connected with the barge Rambler before her loss.

Third. To the third cross-interrogatory he saith:

A. As to navigation, I have stated I have none. My expe-
10 rience as to mooring vessels, &c., commenced in the year 1849. I was engaged as stevedore on schooners, barks, and ships. I was connected with them some sixteen years as stevedore. I can name a large number: there was the lighter W. T. Conquest, schooner Hartstein, bark Mary Morris, ship Martha's Vineyard, and a great many others, if necessary.

Fourth. To the fourth cross-interrogatory he saith:

A. I have known of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the day to haul arround into the slip at night and lie there over night in some cases. I have never known or heard of lighters or barges when lying at night at the end of a pier, or in the slip, to have a light set or in some way displayed on them; sometimes I have seen a watchman on board of lighters and barges at the end of piers at night.

HUGH BYRNE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th of November, 1865, before

CHAS. W. NEWTON,
United States Commissioner.

11 To the first interrogatory he saith:

A. My name is Luke Mahan. I reside at 152 Johnson street, in the city of Brooklyn, county of Kings and State of New York. Am, by occupation, a lighterman.

To the second interrogatory he saith:

A. I am acquainted with Mr. Wetmore, the libellant. I do not know that I have any acquaintance with the other parties.

To the fourth interrogatory he saith:

A. I have been as much as twenty-five years around the harbor of York, off and on; during which time I have been engaged in the lightering business, and acquainted with the navigation and mooring of vessels at the piers in said harbor.

12 To the fifth interrogatory he saith:

A. It is the general custom of lighters to moor at the end of a pier at night, either when they are taking in or discharging cargo; I have done so myself, and seen others do it. I might take a notion, if I had my cargo all in, to back into the slip, but if not, I would make fast to the end of the pier and lie there.

To the sixth interrogatory he saith:

A. I have never known or took notice of a barge or lighter lying at the end of a pier at night having a light on board, and there is no custom that I know of requiring a light. I know that I never had one. As to watchman being kept on board of a barge or lighter, it is me rely to prevent stealing. I have known of watchman being
13 put on board to watch the goods. I do it myself every week; it is done very often, but simply to protect the goods on board.

To the seventh interrogatory he saith

A. I don't think it is. I would sooner lie at the end of a pier at night with a barge without a light than with a light on, for the reason that a vessel lying in the stream always has a light on at night, and if the vessel lying at the end of a pier carries a light these small class vessels, schooners, sloops, and lighters, which are beating in the river, will mistake her for a vessel lying in the stream, and will try to run to the leeward of her or ahead of her; and if you cannot head her, you must go to the leeward of her; and when you get close to her, you either have to run into her, or into the wharf and injure your vessel.

14 To the eighth interrogatory he saith:

A. If a man thought it was necessary to prevent stealing his iron, he might put a watch on board; but if not, I do not think it is necessary or proper to have a watch on board because of a dark night; if one was on board, he could not prevent vessels from running into him, nor could he tell the name of a vessel that might run into him; that is, he might tell her name and might not.

To the ninth interrogatory he saith:

A. I do not.

15 To the first cross-interrogatory he saith:

A. I have been in Brooklyn, off and on, for the last thirty years, but doing business in the harbor of New York most of the time. I have known Mr. Wetmore by sight for the last twenty years. I was engaged in the lightering business in the port of New York during the fall and winter of 1857, and was employed by George W. Thompson, I think. I have been away from him about eight or nine years, as near as I can recollect. I worked for him in the neighborhood

of fourteen years, off and on. I am about fifty-six years of age now, sir.

To the second cross-interrogatory he saith:

A. I have not been a witness before in this cause. I was in no ways connected with the barge Rambler before her loss. I have seen her, that's all.

16 To the third cross-interrogatory he saith:

A. About twenty-five years ago, more or less, I was engaged with all kinds of vessels in the lightering business—all lighters. I worked on board the lighters Union, Suffolk, Adaline, Fret, Davis, Linwood, and the Flirt, and the Garner. I have been aboard of so many lighters that I don't know that I can give the names of all of them. I have been in the employ of Alderman Franchee, George W. Thompson, S. L. Mitchell; I am still in the employ of Mr. Mitchell, and have charge of all of his lighters.

To the fourth cross-interrogatory he saith:

A. I have heard of some lighters going into the slip at night when they had all their cargo in. I have not known of their having a light on board at night, not for twenty-five years, to the best of
17 my opinion. I have known of watchmen being on board when there is cargo on board, but we do not keep one unless we have cargo.

LUKE MAHAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th of December, 1865, before

[SEAL.] CHAS. W. NEWTON, *United States Commissioner.*

18 The President of the United States of America to Charles W. Newton, esq., U. S. commissioner, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority, diligently to examine upon their corporal oaths, or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, C. W. Godard, James W. Husted, John McCreery, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, as witnesses on the part of the libellant in a certain cause now pending undetermined in the Supreme Court of the United States of America, wherein David W. Wetmore, libellant, &c., *v.* the Steamboat Granit eState, &c., claimants and appellants. And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witness before you; and we do hereby require you , before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and send by mail, directed to Supreme Court of the United States, care of D. W. Middleton, esq., clerk, Washington, D. C., as soon as may be convenient after the execution of this commission, and that you return the same, when executed as above directed, with the title of the cause indorsed on the envelope of the commission.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, this 25th day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

BENEDICT, BURR & BENEDICT, *Proctors for Lib'l'nt.*

19 The execution of this commission appears in certain schedules hereunto annexed.

CHAS. W. NEWTON, *United States Commissioner.*

20 *Instructions to Commissioners.*

Annexed to the commission is an extract from the statutes of the State of New York relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample instructions :

I. All the commissioners named in the commission should have notice of the time and place of executing it, and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by , the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation :

"You do swear that the answers which shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form : "You do swear in the presence of the ever living God," and while so swearing he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form : "You do solemnly, sincerely, and truly declare and affirm;" omitting the words "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner :

Deposition of witnesses produced, sworn, (or affirmed,) and examined the day of , in the year one thousand eight hundred and , at , under and by virtue of a commission issued out of the , in a certain cause therein depending and at issue between , defendant, as follows :

A. B., of (insert his place of residence and occupation,) aged years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows: First. To the first interrogatory he saith, &c. (Insert the witness's answer.) Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of , 18 , before

——— ———, *Commissioner.*

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioners in this manner:

At the execution of a commission for the examination of witnesses between , defendant, this paper writing was produced and shown to, (insert the witness's name,) and by him deposed unto at the time of his examination before—

——— ———, *Commissioners.*

21 VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of , 18 , before—

——— ———, *Commissioner.*

X. The commissioner will make return on the back of the commission by indorsement thus:

"The execution of this commission appears in certain schedules hereunto annexed."

——— ———, *Commissioner.*

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interroga-

tories, cross-interrogatories, depositions and exhibits must be folded into a packet and bound with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus :

To , esquire, clerk of the , at .

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court :

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post office, he making the following indorsement thereon :

"Deposited in the post office at this day of , 18 , by me.

——— ———, *Commissioner.*"

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following indorsement :

"Deposited in the letter bag of the , now lying at , and bound for the port of New York, this day of 18 , by me.

——— ———, *Commissioner.*"

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon , who will direct him as to its delivery.

22 U. S. Supreme Court.

Affidavit of service.

DAVID W. WETMORE
vs.
THE STEAMBOAT GRANITE STATE.

CITY AND COUNTY OF NEW YORK, *ss :*

Alfred T. Seward, of the said city, being duly sworn, doth depose and say that he did, on the 3d day of November, in the year one thousand eight hundred and sixty-five, serve Owen, Gray & Owen. claimant's proctors in the above-entitled action, with an order and

aff't, of which the annexed is the original order, and by aff't delivering the same to J. H. Gray, one of the firm.

ALFRED T. SEWARD.

Sworn to before me this 4th day of Nov., 1865.

WM. D. JONES, *Not'y Pub., N. Y. Co.*

23 U. S. Supreme Court.

DAVID W. WETMORE
vs.
THE STEAMBOAT "GRANITE STATE."

On the affidavit hereto annexed, and on motion of Benedict, Burr & Benedict, libellant's proctors, it is directed and ordered that a commission issue out of the circuit court of the United States for the southern district of New York, directed to Charles W. Newton, esq., U. S. commissioner, to take the testimony on interrogatories to be annexed thereto of C. W. Godard, James W. Husted, John McCreery, Luke Mahan, and Alfred Russell, Hugh Byrnes, and Capt. John Schenck. And it is further ordered that such commission be not issued except upon interrogatories to be filed by the libellant, and notice to the claimants or their agent or attorneys, accompanied with a copy of said interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice.

Oct. 31, 1865.

S. NELSON.

24 U. S. Supreme Court.

DAVID W. WETMORE
vs.
THE STEAMER GRANITE STATE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

David W. Wetmore, of said district, being duly sworn, says that an appeal has been taken in this cause to the Supreme Court of the United States, and that said cause is now pending on said appeal in said Supreme Court, and that the testimony of C. W. Godard, James H. Husted, John McCreery, Luke Mahan, and Alfred Russell, and Hugh Byrnes, and Capt. John Schenck is material and necessary to him upon the hearing of the appeal in this cause, as he has been advised by his counsel in this cause, Robert D. Benedict, esq., who resides at No. 305 Adelphi st., Brooklyn, and that without such testimony it would be unsafe for him to proceed to the hearing of the said cause; and that said witnesses each and all of them reside in or do business in the city of New York.

DAVID W. WETMORE.

Sworn to before me this 31 Oct., 1865.

WM. D. JONES,
Notary Public, N. Y. City.

25 Indorsed: U. S. Supreme Court. David W. Wetmore *vs.* The Steamboat Granite State. Order and aff's. Benedict, Burr & Benedict, att'ys, 76 Wall st., N. Y.

GENT.: Please take notice that within is a copy of an order duly made in this cause and the affidavit on which the same is granted.
Nov. 4, 1865.
Yours, &c.,
BENEDICT, BURR & BENEDICT,
Lib'lts' Proctors.
To OWEN, GRAY & OWEN, *Cl'm'ts' Proctors.*

I, Kenneth G. White, clerk of the circuit court of the United States for the southern dist. of New York, do hereby certify that the foregoing papers are true copies of their respective originals on file and remaining of record in my office.
In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.
[SEAL.] KENNETH G. WHITE, *Clerk.*

26 Interrogatories to be administered to C. W. Goddard, James W. Heusted, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, witnesses to be examined on behalf of the libellant, under a commission issued out of the circuit court of the United States for the southern district of New York, in a cause wherein David W. Wetmore is libellant and the steamer Granite State is respondent.

First. What is your name, residence, and occupation?
Second. Do you know the parties to this action? or either or which of them?

Interrogatories to C. W. Goddard and James W. Husted:

Third. If you have stated that you are in any way connected
27 with the office of captain at the port of the city of New York, then state if there were any regulations of the said port in the year 1857; and if so, annex a copy thereof to your deposition.

To all the witnesses:

Fourth. What experience have you as to navigation in the harbor of New York, and as to the mooring of vessels at the piers in said harbor?
Fifth. What is the usage or custom of lighters or barges in said port as to mooring at the end of said piers?
Sixth. What is the usage or custom of lighters or barges so moored as to carrying lights at night or having a watch kept on them?
Seventh. From your experience in such navigation and mooring, state whether or not it would be necessary or proper for a
28 lighter or barge moored at the end of a pier at night to carry

a light, and give the reasons why it would or would not be necessary or proper.

Eighth. From such experience, state whether or not it would be necessary or proper for a lighter or barge loaded with bar iron and so moored at night to have a watch on deck, and give the reasons.

Ninth. Do you know any other matter or thing which may be of benefit to the libellant herein? If so, state the same as fully as if you had been specially interrogated thereto.

BENEDICT, BURR & BENEDICT,
Libel't Proctors.

Filed November 6, 1865.

29 Cross-interrogatories to be administered to C. W. Goddard, James W. Halsted, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, witnesses to be examined on behalf of the libellant, under commission, in a certain cause wherein David W. Wetmore is libellant and the steamer Granite State is respondent.

First cross-interrogatory, (to all the witnesses:) If in answer to the first and second direct interrogatories you say you reside in New York and know the parties, then state how long you have resided in New York and how long you have known the parties; state also whether you resided and were in New York in the fall and winter of 1857, and in what particular business you were then engaged, and in whose employment you were, and how long you had been so employed; state also your age.

Second cross-interrogatory, (to all the witnesses:) Have you been heretofore examined as a witness in this cause? Were you in anywise connected with the barge Rambler before her loss? If so, state in what capacity.

Third cross-interrogatory, (to all of the witnesses:) If in answer to the 4th interrogatory you state that you have experience as to the navigation and mooring of vessels in the harbor of New York,
30 then state when such experience first commenced; what kind and class of vessels you were engaged with, and give the name of each; how long you were connected with them, and in what capacity, and by whom you were employed.

Fourth cross-interrogatory, (to all of the witnesses:) Have you not known or heard of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the day to haul around into the slip at night and lie there over night? Have you not known or heard of lighters or barges when lying at night at the end of a pier or in the slip to have a light set or in some way displayed upon her? Have you not known or heard of lighters and barges lying in a slip or at the end of a pier at night to have a keeper or watchman on board?

Fifth cross-interrogatory, (to C. W. Goddard and James W. Halsted:) If in answer to the 3d interrogatory you say that you were connected with the office of captain of the port of New York, then state when you first became connected with that office and what your con-

nexion therewith has been since then. Have you any superior officer? If so, who? Have you any particular district under your charge or supervision? If so, what and how long has it been so? If you produce a copy of the regulations of the port in the year 1857, state how you know that they are the regulations then in force; state also whether what you produce are all the regulations upon the
31 subject; state whether the harbor master had any other or different rules or regulations from those which you have produced. If so, produce and annex a copy of such other rules and regulations to your depositions.

OWEN, GRAY & OWEN,
Claimants' Proctors.

The execution of the within commission will appear as per depositions hereto annexed; all of which is respectfully submitted.

CHAS. W. NEWTON,
United States Commissioner.

Filed in Supreme Court January 8, 1866.

A LAW RELATIVE TO THE DUTIES OF THE HARBOR MASTERS OF THE PORT OF NEW YORK, PASSED MARCH 16TH, 1850, WITH THEIR REGULATIONS.

HARBOR-MASTERS OF THE PORT OF NEW YORK.

The port of New York is divided into eleven districts, nine of which are in the city of New York, and two in Brooklyn. The bounds of each district, with the names of the harbor-masters, and the location of their offices, are as follows:

First district.—T. A. Jerome; office, 248 South st., Batic and Henry, Brooklyn. District extends from west side pier 42 to the extent of the port, East river.

Second district.—Oren W. Brennan; office, 162 South st.; residence, 132 Bleecker street. District extends from east side pier 36 to east side pier 24, East river.

Third district.—Archibald Hall; office, 83 South street; residence, 135 Madison st. District extends from west side pier 24 to west side pier 18, East river.

Fourth district.—James P. Fagan; office, 61 South street; residence, 40th street, between 5th and Madison avenues. District extends from east side pier 17 to west side pier 13, East river.

Fifth district.—Robert Murray; office, 36 South street; residence, 87 Monroe street. District extends from east side pier 12 to east side pier 8, East river.

Sixth district.—A. D. Barbor; office, 8 South street; residence, 1 Bridge street. District extends from west side pier 8 to the Battery, East river.

Seventh district.—Reuben Coffin; office, 46 West street; residence, 164 West 28th st. District extends from the Battery to north side pier 7, North river.

Eighth district.—Charles G. Murch; office, 73 West street; residence, corner 20th street and 3d avenue. District extends from south side pier 8 to centre of Barclay street, between 26 and 27, North river.

Ninth district.—Jacob L. Dodge; office, 183 West street; residence, 101 West 38th. District extends from centre Barclay Street slip to the extent of the port north.

Tenth district, Brooklyn.—David Stewart; office, 12 Atlantic street; residence, 104 Willoughby street. District extends from Atlantic street to Red Hook Point.

Eleventh district.—John Cashow; office, 43 Fulton street; residence, 50 Hicks street. District extends from Atlantic street to the extent of the port east.

Rules and regulations of the harbor-masters of the port of New York.

The following are the rules and regulations established and adopted by the board of harbor-masters of the port of New York, in 1857:

Mooring vessels in the East river.—No vessel shall be moored in the stream of the East river nearer than three hundred yards from the

docks of the cities of New York and Brooklyn, from the first day of May to the first of October.

Vessels carrying gunpowder, where to be moored or anchored, and their signal.—All vessels having on board gunpowder, when moored or anchored in the harbor, shall hoist and keep a *red flag* hoisted in the rigging during the time they are discharging or receiving the same.

Vessels at single anchor.—No vessel shall lie at single anchor in the East river, within three hundred yards of New York and Brooklyn docks, for a longer period than twenty-four hours.

Vessels moored or anchored in the North river.—No vessel shall be moored or anchored in the North river nearer than three hundred yards from the wharves; nor shall any vessel lie at single anchor there more than twenty-four hours.

Vessels anchored at night in the North and East rivers.—All vessels lying at anchor in the night time in the Hudson river, north of the Battery, or in the harbor of New York, or in the bay thereof, as far as the village of Castleton, Staten island, or in the East river as far as the south point of Blackwell's island, "the masters of such vessels shall cause the peaks to be lowered if the sails be up, and shall cause good and sufficient lights to be shown in some part of the rigging, at least twenty feet above the decks and from the taffrails."

Penalty for neglect.—For a non-compliance with the provisions of the above section, the masters and owners of such vessels, so offending, shall be liable to a penalty of fifty dollars.

Owners, how liable for penalty of fifty dollars.—In case such penalty can not be collected from the master, "the owners of such vessel, jointly and severally, shall be liable therefor in the same manner as if they were sureties of such master."

Position of vessels lying at wharves.—All vessels lying at the wharves or piers, or in the basins or slips, shall, unless otherwise directed, lie with their heads up the docks.

Those on the east side of the docks to have their yards topped by their larboard lifts; the crown of their starboard anchor taken in on the forecastle, and their larboard cable bent and clear.

Those on the west side to have their yards topped by their starboard lifts, to be regulated agreeably to the cut on first page; the palms of their larboard anchor taken in on the forecastle, and their starboard cable bent and clear.

Those lying on either the east or west side of the docks shall have the movable fore and aft spars and spritsail yards rigged in; their stern davits, quarter davits, bumpkins, and martingales unshipped.

Position, how changed.—The position of vessels is not to be changed without special permission from the harbor-masters, except to paint, or bend sails.

Vessels lying in the North river.—Those lying on the south side of the docks, to have their yards topped by their larboard lifts.

Those on the north side to have their yards topped by their starboard lifts.

Those on the south side to have the palm of the starboard anchor taken in on the forecastle, and their larboard cable bent and clear.

Those on the north side to have their larboard anchor on the forecastle and their starboard cable bent and clear.

Applications for berths.—Vessels wanting berths will apply to the harbor-master of the district where the berth may be desired, stating where the vessel lies.

Exchange of berths.—No vessels shall exchange or dispose of their berths without the permission of a harbor-master.

Vessels at the end of wharves.—All vessels at the end of wharves or piers shall haul either way, as best to accommodate vessels going in or coming out of such wharves or piers.

Vessels discharging cargo.—All vessels not discharging or receiving cargoes shall make room for those needing more immediate accommodation.

Vessels in distress.—Vessels returning, or putting into port, in distress, shall be accommodated with berths as soon as practicable.

Ship-keepers.—All vessels shall have on board a ship-keeper to take charge of them.

Removing vessels.—If no person be found on board any vessel which may be required to remove, the harbor-master shall cause the same to be done at the expense of the master, owner, or consignee, who shall also be liable for all damage caused by such vessel.

Obstructing ferry-boats.—No vessel shall be moored, anchored, or fastened so as in anywise to obstruct or interfere with the ferry-boats of the city.

Ballast.—No ballast shall be thrown overboard in the port below low water-mark, and vessels employed in receiving or discharging ballast shall have a tarpaulin between them and the dock, so as to prevent any ballast falling into the water.

Incumbering wharves.—No person shall incumber any of the wharves, piers, or bulkheads with spars, boats, goods, or any other obstructions.

Heating tar.—No pitch, tar, or other combustible shall be heated on board any vessel lying at any wharf, pier, slip, or basin of this city; but the same shall be done on floating stages or boats, or on the bulkheads, and with a bucket of water always ready for use.

Boats.—No vessel shall hoist a stern boat, quarter boat, or boat of any kind, under the bowsprit.

A refusal to comply with any of the foregoing rules and regulations renders the party subject to a penalty of fifty dollars for each offence, and for all damages, with costs of suit.

In case of the absence of a harbor-master, from sickness, either of the others will attend to his duties.

Chapter 72.—*An act relating to harbor-masters of the port of New York, passed March* 16, 1850.

The people of the State of New York, represented in senate and assembly, do enact as follows :

§ 1. There shall be appointed, on the nomination of the governor, by and with the advice and consent of the senate, eleven harbor-masters for the port of New York, nine of whom shall reside in the city of New York, and two of said harbor-masters shall reside in the city of Brooklyn; said harbor-masters shall hold their offices for two years, or until others shall be appointed in their places. At least five of said harbor-masters shall have been masters of vessels sailing from said port, or pilots who shall have been engaged in piloting vessels in or from said port, or seamen that have been engaged in navigating the waters of the harbor of New York.

§ 2. Each of said harbor-masters, before entering upon the duties of his office, shall execute a bond to the people of the State of New York in the penal sum of two thousand five hundred dollars, with two sufficient sureties to be approved by the mayor of the city of New York, conditioned for the faithful performance of his duties; and said harbor-masters shall jointly and severally perform all the duties, exercise all the powers, and divide equally between them all the emoluments imposed and authorized by this act.

§ 3. The said harbor-masters shall have authority to regulate and station all ships and vessels in the stream of the East or North rivers within the limits of the city of New York, and the wharves thereof, and to remove, from time to time, such ships or vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be more immediately accommodated for the purpose of receiving or discharging their cargoes; and as to the fact of their being fairly and bona fide employed in receiving or discharging their cargoes, the said harbor-masters, or either of them, is hereby constituted the sole judge. The said harbor-masters, or either of them, shall have authority to determine how far, and in what instances, it is the duty of the masters and others having charge of ships and vessels to accommodate each other, in their respective situations; and if any master or other person having charge of any ship or vessel shall refuse or neglect to obey the direction of the said harbor-masters, or either of them, in matters within their authority to direct; or if any person shall resist or oppose the said harbor-masters, or either of them, in the execution of the duties of their office, such master or other person having charge of any ship or vessel, or other person whatsoever, shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered, with costs of suit, in the name of the treasurer of the New York Hospital, before any court having cognizance thereof. All which fines, when collected, shall be paid to said treasurer, for the use of said hospital.

§ 4. The said harbor-masters shall have power to demand and receive from the commanders, owners, and consignees, or either of

them, on all ships or vessels of the United States, and on all ships or vessels of any foreign nation that are permitted by the laws of the United States to enter on the same terms as vessels of the United States, and which shall enter the said port of New York, and load or unload, or make fast to any wharf therein, one and one-half of one cent per ton, to be computed from the tonnage expressed in the register of enrolments of such ships and vessels, respectively, and no more; and also on all other foreign ships or vessels which shall arrive at and enter the said port, and load, unload, or make fast to any wharf therein, double the amount of fees above specified, according to the rate of tonnage or burden of said ships or vessels, respectively, to be ascertained by their respective registers or other documents on board the same. But no compensation shall be demanded by the said harbor-masters for the entrance into the port of New York of any sloop or schooner employed in the coasting trade within the United States, unless, upon the application of the master or person having charge of any such vessel employed in the coasting trade as aforesaid, the said harbor-masters, or either of them, shall interfere and adjust any difference which may happen respecting the situation or position of any such coasting vessel, which difference said harbor-masters, or either of them, are hereby authorized and required to hear and determine; in which case the said harbor-masters, or either of them, may demand and receive from the party in default in the premises the sum of $2, except in canal barges and canal boats, for which he may receive $1 each, and no more, for any difference so by him adjusted; to be sued for and recovered in the names and for the use of said harbor-masters in any court having cognizance thereof.

§ 5. The master, owner, or consignees of any ship or vessel subject to the payment of fees to the harbor-masters as aforesaid, shall, within forty-eight hours after the arrival of such ship or vessel, pay the fees so due thereon at the office of the said harbor-masters, or one of them; and in default of such payment, if the same shall have been first duly demanded, such master, owner, or consignee on whom such demand shall have been previously made, shall forfeit and pay double the amount of such fees, to be sued for and recovered in the names and for the use of the said harbor-masters in any court having cognizance thereof.

§ 6. It shall be the duty of the said harbor-masters to superintend and enforce the execution of all laws of this State, and by-laws of the corporation of the city of New York, for cleaning the wharves and docks, and for preventing and removing all nuisances in or upon them, or either of them; and if the person or persons whose duty it shall be to remove such nuisance shall refuse or neglect to remove the same within forty-eight hours after notice from the said harbor-masters, or one of them, requiring such person or persons to remove the same, the said harbor-masters may thereupon demand and receive from such person or persons so neglecting or refusing the sum of two dollars and fifty cents; and in case of non-payment thereof on demand, the same may be sued for and recovered in the names of

and for the use of the said harbor-masters in any court having cognizance thereof.

§ 7. It shall be the duty of said harbor-masters, whenever required by the captain, owner, or consignee of any vessel to give a copy of this act to such captain, owner, or consignee, and no person shall be fined for a violation of this act until that has been done.

§ 8. It shall hereafter be the duty of said harbor-masters to report to the governor of the State, under oath, the whole amount of fees received to the 31st of December, inclusive, in each year.

§ 9. This act shall take effect immediately.

STATE OF NEW YORK, *Secretary's office:*

I have compared the preceding with the original law on file in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original.

CHRISTOPHER MORGAN,
Secretary of State.

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Supreme Court of the United States.

DAVID W. WETMORE,

vs.

THE STEAMBOAT GRANITE STATE, &c.

BENEDICT, BURR & BENEDICT,
Proctors for Libellant.

E. C. BENEDICT,
Counsel.

Abstract, Points and Brief.

THIS is an appeal from the District Court of the United States for the Southern District of New-York, in a cause of collision *in rem.*

The barge *Rambler*, used as a lighter, was taking iron from a ship lying at Pier No. 23, East River. She lay, as is usual in such cases, at the end of the pier. The ship lay alongside the pier and discharged the iron on to the pier, whence it was taken into the barge. Another ship lay on the other side of the pier. When night overtook them the barge was but partly loaded, and had to lie there till morning to complete her load and to keep her place. She was accordingly fastened strongly, with two chain springs at each end, to the pier, and two lines, from each end, to the two ships on each side of the pier, (Russel, fol. 17,) and her deckload was covered by some old light-colored half-worn sails, whitened with chalk, (Erle, fol. 35.)

About 4 o'clock in the morning, her usual time of arrival, the passenger steamer, *Granite State*, came in from the eastward on an ebb tide.

To reach her berth she rounded to and passed Pier 23, at a safe distance, (King, fol. 21,) intending to pursue her usual practice to work in, by throwing a head line to the end of Pier 26, and a stern line to No. 25, easing off the head line and straining on the stern line, (King, fol. 22, 23,) when she encountered the Williamsburg Ferry boat coming out of her slip, between Nos. 25 and 26, (King, fol. 21.)

The *Granite State* then backed down past Pier 23, with her helm aport, which carried her stern out "three or four lengths angularly into

the river," till she encountered the Fulton Ferry boat coming out of the slip below Pier No. 22, (King, fol. 21.) She lay still with her helm hard aport until that ferry boat passed out, (fols. 29, 30.) While lying there they saw the *Rambler*, (Vail, fol. 29,) but having probably become impatient of obstacles and delays, they abandoned the usual plan of working in slowly and safely by lines to the piers, and put her helm hard a starboard, (Lane, fol. 30,) and rang the jingle-bell for extra speed, "to open the engine and go ahead with full force," (Vail, the pilot, fols. 29, 30,) and, with her "stern out, aiming in for her berth," rushed forward and actually drove her paddles directly over the barge, cutting her down with every paddle, and breaking her loose, so that she drifted out and sunk. It was a dark, rainy night.

The action is brought to recover damages for the injury to the barge, and the cargo for which libellant was responsible as a common carrier.

The libel was filed December 24, 1857, (fol. 2.)

The vessel was bonded December 29, 1857, (fol. 9.)

The answer was filed 8th February, 1858, (fol. 10.)

The hearing commenced January 18, 1859, (fol. 17.)

The decision for the libellant was made March 19, 1859, referring it to a Commissioner to compute the damages, (fol. 36.)

The following is the opinion of the Court:

DAVID W. WETMORE,

vs.

THE STEAMBOAT GRANITE STATE, &c.

The pleadings charge that the barge *Rambler* was moored at Pier No. 23, East River, December 18, 1857, taking in a load from a ship lying at the same pier, and was run into, broke adrift and injured in the night time, by the steamer *Granite State*. The answer alleges that the steamer is a freight and passenger boat, plying regularly between New-York and Hartford; that she arrived in port during a dark and boisterous state of weather, at about four o'clock A. M.; was coming round in the East River in the usual manner, and the collision occurred in conse-

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quence of the negligence of the barge, no person or lookout being on board, and no light displayed. A large amount of testimony was given, each party seeking to show the other guilty of negligence and culpable conduct in what was omitted and what was done conducing to the collision.

Held by the Court:—That upon the proofs the barge was placed in a usual and proper position at the end of the pier, and her owner was not obliged, by the custom of the port or in his business, to have a watch kept on board, or a light suspended during the night time; that the steamer was under obligation to avoid coming upon vessels moored at the wharves, and that she undertook, at her own peril, to reach her usual berth, if the boisterous weather, the darkness of the night, or the passing of ferryboats rendered it dangerous or even difficult to do so. The barge was not upon any track the steamer was entitled to take, but was lying at a wharf, from which the steamer was, by the laws of navigation, compelled to keep at a safe distance.

The steamer was not acting under any constraint of the weather or other emergency, and, having elected to navigate under the embarrassments surrounding her, it was done at her own peril, and she must be answerable for the consequences.

Decree for the libellant for his damage, with order of reference to a Commissioner.

The Commissioner reported $2,086.12, the barge being valued at $850, September 13, 1859, (fol. 76.)

The claimants filed exceptions to this report, (fol. 78.)

The report as to the value of the vessel was set aside, and it was referred back to the Commissioner, (fol. 80.)

The Commissioner, on further proofs, reported the value of the vessel at $1,000, an increase of $150, (fol. 125.)

The claimants filed exceptions to this report also, (fol. 126.)

It was again referred back to the Commissioner, (fol. 129.)

The Commissioner, in his third report, reported the value of the barge at $895, and with the interest at $1,176.92, (fol 133.)

This report was also excepted to by the claimant, (fol. 136.)

It was confirmed by the Court in its final decree, February 2, 1863, for $2,649.98, (fol. 138.)

The cause was then appealed to the Circuit Court, (fol. 142.)

It was heard in the Circuit Court, May 18, 1863, and the decision of the District Court was reversed, and the libel dismissed with costs, (fol 153.)

The following is the opinion of the Court:

DAVID W. WETMORE,

vs.

THE STEAMBOAT GRANITE STATE.

NELSON, C. J.

The collision in this case occurred between the *Granite State* and the barge *Rambler*, about 4 o'clock on the morning of the 18th December, 1857, in the East River, off Pier, No. 23.

The steamer had arrived in one of her regular trips, with passengers and freight, from Hartford Conn., and was in the act of entering her slip between Piers, Nos. 24 and 25. The barge lay across the end of Pier, No. 23. This pier extended some sixty feet further out in the river than the piers in the immediate vicinity above and below. The barge had no masts, and her hull lay below the top of the pier; that is, the pier was higher than the vessel, as she lay in front of it. The barge was well secured in her place, but had on board no watch or light. She had been taking in loading from the dock which was discharged from a vessel lying in one of the slips. The morning was dark and rainy, and a pretty strong wind from the south-east, the tide the last of the ebb. The steamer came down on the Brooklyn side, and, at the proper point, swung round towards the New-York shore, and straightened up with a view to work into her berth. As she was approaching it, a Williamsburg Ferry-boat came out of her slip, which was between Piers, Nos. 25 and 26, the next above the berth of the steamer, which compelled her to stop and back with sternway obliquely into the river, until obliged again to change her direction and go ahead to avoid a collision with a Fulton Ferry-boat that had just come out of her berth, between Piers, Nos. 21 and 22, below where the barge lay. The steamer, while thus

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going ahead to get into her berth, after the embarrassments stated, struck the larboard quarter of the barge with her wheel, and caused the damage complained of. The barge was not discovered till within some fifty or sixty feet of her—the steamer, at the same time, going ahead and sagging in towards her; and although every effort seems to have been made which could be for the moment—orders being immediately given to work strong, with a view to pass, before the steamer was carried by the sagging against her—it was too late to avoid the contact.

Much testimony is taken in the case upon a question of usage, whether or not the barge in the exposed position where she lay should not have had on board a watch or a light? We do not say, upon these proofs, that she was in fault, so as to subject her to a portion of the damages if the *Granite State* had been found also in fault; but we are bound to say, that, so far as a watch or a light might have facilitated the discovery of her by the approaching vessel, the omission is a matter properly entering into and influencing the judgment of the Court upon the question of negligence on the part of that steamer. To this extent the barge is obliged to assume the responsibility of the omission. This principle has been repeatedly asserted and applied.

Now, upon the proofs, we are quite satisfied, taking into view the position of the barge at the end of the dock, undistinguishable in a dark and rainy night, from the end of the dock itself, and neither watch nor light on it to give notice of its position, it was no fault on the part of the *Granite State* that she did not discover it earlier than testified to, when it was too late to avoid the collision.

All the hands examined on board the steamer agree that it could not have been discovered earlier. They saw the large vessels in the slips, and say they might have seen a vessel in front of the dock, if she had had masts or a light.

The steamer was completely manned, all hands having been called to the deck, up the river, with a view to preparations for entering her berth and landing her passengers. We do not see that the steamer omitted any duty that devolved upon her in the emergency. She had adopted the usual measures to work herself into her berth, and pursued them with skill and diligence; and nothing but this half-concealed object at the end of the dock, which she met unexpectedly, and in a most exposed condition, led to the misfortune. I think the Court below erred, and that the decree should be reversed, and the libel dismissed.

For libellant, Messrs. Benedict, Burr & Benedict; for claimants and appellants, Messrs. Owen, Gray & Owen.

The libellants thereupon appealed to the Supreme Court, (fol. 154.)

In the Supreme Court further testimony was taken under a commission and by consent; and errors in the Apostles have been corrected in this Court.

In the District Court the case was argued on the testimony as it is now on the record; but in consequence of unfortunate mistakes in transcribing, first discovered after this record was printed, the cause was heard in the Circuit on incorrect statements of testimony, now first corrected.

In fol. 22, it was said in the apostles, "This pier (No. 25) projects fifty or sixty feet beyond that to his slip, and also about same from piers below." It should have been, as it now is, "pier below," meaning the pier below 25, that is to say, Pier 24—the meaning and the truth being that 23 projects beyond 24 and 25, but not beyond the piers below 23.

Misled by this error, the Circuit Judge states, as one of the facts influencing his opinion, "This pier extended some 60 feet further out in the river than the piers in the immediate vicinity, above and below," of which now there is no evidence.

The plan of the piers now handed to the Court is made by tracing from the published map of the piers, now shown to the Court, by which it will be seen that the piers diminish in length from Pier 20, which is 450 feet long, to Pier 26, which is only 245 feet long, and then increase to Pier 29, which is, in fact, the longest pier on the East River, being 483 feet long; so that Pier 23, instead of projecting 60 feet beyond the piers on each side of it, is 18 feet shorter than 22, and 32 feet shorter than 20.

Other errors, now corrected, tended to put out of sight the cardinal negligence of the steamer, viz.: her impatient, reckless, rushing upon this barge, in total disregard of the usual precautions in working a steamer into a slip in a crowded port in the night. In each of four important instances, where this rashness is testified to, there is a mistake in the apostles. The word "hard" is written "hand," (fol. 21,) "strong" is written "string," (fol. 23,) "gingle" is written "gong," (fol. 29,) and "ported" is written "pulled," (fol. 30.)

If the testimony had been correctly before the Circuit Court, it may

be presumed that the Court would not have said, "The steamer adopted the usual measures to work herself into the berth, and pursued them with skill and diligence."

I.—The usual way of working the steamer into her berth was to move slowly up, to opposite her berth, then to throw a line from her bows to Pier 26, and a line from her stern to Pier 25, then ease off on the line from her bows and work in by straining on the line from her stern. Thus, by working forward the port wheel, and easing the bow line, and hauling on the stern line, the bows are thrown outward and the stern hauled in, and she slips easily into her berth in a slow, cautious and safe manner.

This course, so important in a dark night, they intended to pursue when they first came opposite their berth.

"Took usual course in coming round and working into his berth." (King, the Master, fol. 22.)

"On ebb tide we work ship in by throwing head line to end of Pier, No. 26, and stern line to No. 25; ease off on head line, and work in by straining on stern line; and was at time following out that method of getting into his berth." (King, the Master, fol. 22.)

"Was moving up slowly when Williamsburg boat came out." (King, fol. 24.)

"Got one length off his own dock, or possibly more, when Williamsburg Ferry boat came out." (King, fol. 21.)

"Was about as far out as Pier 27 when he discovered Williamsburg Ferry-boat." (King, fol. 24.)

II.—They did not, however, carry out their lines, because, when, moving slowly up, they came opposite their berth, the coming out of the Williamsburg Ferry boat between Piers 25 and 26 prevented, and they determined to back the steamer out of the way into the stream, and take a fresh start. They backed with the wheel hard a-port, the effect of which was to throw her stern out, and to take her a considerable distance, wide out into the river.

"Ferry boats started out between Piers 25 and 26; witness gave signal to back; that order was obeyed, and the steamer was backed three or four lengths out angularly into the river." (King, the Master, fol. 21.)

"She came in, in usual way, was checked, going in, by Williamsburg Ferry boat, backed and stopped, which brought steamer's stern on swing out." (Vail, the Pilot, fol. 28.)

"Ported wheel hard to round to for berth; held it so when backing down; that would throw her stern off into the stream." (Lane, the Wheelsman, fol. 30.)

III.—They continued to back out into the stream till they reached the track of the Fulton Ferry boat, which was leaving her slip between Piers 21 and 22, and was bound to Brooklyn. The steamer then stopped and lay still a considerable time, during which, by the force of the ebb tide and south-east wind, she drifted to the southward and westward, till she came about as near the ends of the piers as she had been when she first came in—100 feet or more out from the barge lying at Pier 23. The pilot of the steamer then, for the first time, saw the barge. He then started ahead, her wheel being a-port, but, instead of keeping her helm a-port and going forward to opposite her berth, to haul in carefully as before, they put on the whole power of her steam and the whole force of her engine, and threw her helm hard over to starboard, which ran her into, upon and over the barge. Her paddle-wheels struck the barge on her larboard quarter, ten feet forward of the taffrail, and went over her. Three paddles hit her, and left their marks and portions of her buckets on her, cut her down through the deck with a crash, capsized her, sunk her deck-load of iron, and cut her adrift. How different this from the safe, cautious and usual mode which they had intended to pursue.

"The steamer was backed three or four lengths out angularly into the river, then was stopped by a Fulton Ferry boat, which was going out of her slip towards Brooklyn." (King, fol. 21.)

"Difficult to say how long steamer waited; might be two minutes or more; was very short time; had then stopped backing." (Vail, fol. 29.)

"Came in on ebb tide." (King, fol. 21.)

"Wind blowing strongly south-east." (King, fol. 21.)

"Blowing very hard from south-east." (Snow, fol. 24.)

"Sagged in very fast towards dock when lying to." (Vail, fol. 30.)

"Drifting broadside on." (King, fol. 21.)

"Can't judge with any certainty the distance the barge was from him when he first saw her, but judges it was one hundred feet or more." (Vail, fol. 28.)

"Saw an object lying there, but could not determine what it was; thinks he discovered the object before going ahead." (Vail, fol. 29.) "Thinks captain said something was lying at end of dock, a barge or canal boat, does not know which; witness then ordered boat ahead, and captain rung to start her, and immediately to work strong. The gingle-bell orders engine open, and to go ahead with full force." (Vail, fol. 29.)

"Heard the extra bell about the instant he saw the barge." (Snow, fol. 25.)

"Started with wheel hard a-port." (Lane, fol. 30.)

"Threw his helm hard over to starboard after steamer got under way ahead." (Lane, Wheelsman, fol. 30.)

"Hit barge, corner of steamer's bucket (water wheel); struck port quarter of barge." (King, fol. 21.)

"Three buckets struck barge, and mark distinctly made as they passed over her; had steamboat been ten feet further ahead would not have touched her. (Post, fol. 32.)

"Found her larboard quarter broken right down through her deck; found part of bucket of steamer and some iron bands adhering to barge." (Russell, fol. 18.)

"Heard crash of steamer, but could not see any person on her deck." (Pomeroy, fol. 26.)

IV.—There was nothing unusual in the position of these vessels and their surroundings.

The captain, the pilot and the mate of this steamer were perfectly familiar with the whole situation. For years they had been coming out and in at this spot on a regular daily passenger line, arriving at the same hour.

These ferry boats run all day and all night—every day and every night.

At the ends of those piers, water craft are almost always lying. At the end of Pier 23, the captain himself swears, it is unusual not to see one or two ships lying there.

There was no such darkness as to prevent the steamer's making her usual time of arrival, and her usual mode of coming in and rounding to at the right place, escaping all the vessels in the stream, and seeing Pier 27 at a considerable distance, and observing that the steamer "was about as far out as Pier 27." (Fol. 24.) Familiarity had made them careless.

But if it was so dark, they were inexcusable for putting on the full force of steam, and plunging into the darkness as they did.

The river was open and free from obstructions, and there was nothing to prevent the steamer's coming up the second time, as she did the first, and adopting her usual cautious and safe mode of working the boat into her berth, by the use of lines to Piers 25 and 26.

They say they did not see the *Rambler* till too late. This is credible only on the supposition of gross negligence. The bright lights of the steamer would cast their rays upon her a considerable distance. They were thus enabled to see Pier 27, and had the lookout, the pilot and the master, looked as they should have done, with care, they would have seen the *Rambler*, covered as her deck was with sails whitened with chalk.

The following were the legal rules as to lights:

"Rules to be observed by pilots in regard to steamers' lights to prevent collision at night:

"In addition to the rules and regulations for the government of pilots, passed by the Board Supervising Inspectors, October 29, 1852, the following in regard to lights, to prevent collisions at

night, shall be observed by the pilots of steamers navigating seas, gulfs, lakes, bays and rivers, excepting rivers emptying into the Gulf of Mexico and their tributaries.

"RULE 8.

"STEAMERS' LIGHTS—TO PREVENT COLLISION AT NIGHT.

"When under weigh a bright white light at the foremast head on all steamers having foremasts, and upon the stem or flagstaff at the stem of all steamers not rigged for carrying sail, a green light on the starboard side, a red light on the port side.

"When at anchor a bright white light at least twenty feet above the surface of the water, the lantern so constructed and placed as to show a good light all round the horizon.

"1. The mast-head or stem light to be visible at a distance of *at least five miles* on a clear, dark night, and the lanterns to be so constructed as to throw a uniform and unbroken light over an arc of the horizon of twenty points of the compass, viz., from right ahead to two points abaft the beam on each side of the ship.

"2. The colored side lights to be visible at a distance of *at least two miles* in a clear, dark night, and the lanterns to be so constructed as to throw a uniform and unbroken light over an arc of the horizon of ten points of the compass, viz., from right ahead to two points abaft the beam on their respective sides."

If the steamer had not these lights, it was culpable negligence.

If she had these lights and did not see the *Rambler* till within sixty feet of her, it was even more culpable negligence.

And where was the usual hand-globe lantern for harbor use in dark nights? One of these lanterns would have made all the surroundings visible. If she had not such a light, it was culpable negligence.

If she had such a light, and did not see the barge, it was greater negligence.

The lookout passed her three times before he saw her. He was clear forward, and she was astern of him when he first saw her.

"Witness looking out in port side towards the city, when he saw "her, sung out, 'There was something alongside.'" (Snow, fol. 27.)

A careful and vigilant lookout would have seen her as he approached her.

Her bow was as visible when he was fifty feet below her, as her stern was when he was fifty above.

He saw the two ships.

"Could not see her (the barge), she was too much covered by dock. Saw the two ships." (Snow, fol. 27.)

Now, these ships, and especially the *Great Western*, was farther off than the barge, and there were "no lights at end of pier—"no light on any of the vessels." (Pomeroy, folio 26.)

Culbertson *vs.* Shaw, 18, Howard 584, is similar to this, and decides two points which control this case.

"It is objected that the flat boat had no lights. As she was "fastened to the shore, and, from the weight of evidence, was in "her right place, a light was not necessary. Where a boat is "*anchored* in the path of vessels, a light is indispensable, but it is "not required when the boat is fastened to the shore." (Page 587.)

"When a steamer is about to enter a harbor, great caution is "required. There being no usage as to an open way, the vigilance "is thrown upon the entering vessel. Ordinary care, under such "circumstances, will not excuse a steamer for a wrong done. A "vessel tied to the shore is helpless. No movement can be made "by it to avoid an entering boat, therefore the whole responsibility "rests on such boat." (Ibid, 587.)

"The wind was high when she approached the landing. This "should have produced in her officers the utmost vigilance." (Ibid.)

"The responsible officers of a steamer, when about to land, are "not permitted to close their eyes; on the contrary, all experience "requires an exercise of uncommon vigilance. Landing a boat, "especially when the wind is high, is always attended with more "or less danger." (Ibid, 588.)

The steamer was not under any constraint of the weather. The wind was not very strong—there was not much sea—the river is protected fro m the south-east wind by Brooklyn heights. She was entirely under control. It was her business to keep at a safe distance. It was gross negligence to allow her to drift in upon the ends of the piers. They cannot take advantage of their own negligence as an excuse for not taking early precautions against

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difficulties which they themselves caused, and should have foreseen.

V.—Both the District and the Circuit Court hold the barge to be free from blame. This was very clearly so on the proofs.

1. The barge was fastened to the pier with double fastenings. She was absolutely immovable and helpless. She could do nothing to cause or to prevent a collision.

"Moored his vessel with two chain springs on dock and "two lines to *Great Western* and two lines to vessel below. "The fastening was sufficient and good." (Russel, the master, folio 17.)

2. She was lying in her proper berth at the end of the pier, where it was her right to remain.

It was proper and the usual place to lie.

"The position was a proper one, for the *Rambler* has been "there several times. Vessels are usually lying there." (Russel, fol. 17.)

It is usual for lighters to occupy ends of docks nights, and not to keep lights or watch, unless to take care of cargoes. Has lain at Pier No. 23 over night without light or watch; has also seen other lighters at same place. (McCreay, folio 33.)

"Coal barges so lie as often as can get there." (McCreay, folio 33.)

"It is usual for lighters to lie over night at end of piers, "when berth can be obtained." (Earle folio 33.)

"Never saw a light on a barge at pier, nor a watch kept "unless cargo would be in danger. Has been placed at end "of piers by a harbor master." (Earle, fol. 33–4.)

"Has laid at end of pier all night; at Pier 27, at Pier 34, "at Pier 50." (Earle, folio 34.)

"It is usual for lighters in this port to lie at end of pier all "night. Never has known them have lights up, nor to keep "watch." (Russel, folio 35.)

"That kind of vessels lie at end of piers over night to take "in or discharge cargo. Never put a light up or saw it done

"unless anchored in stream. Has lain at end of Black Ball "Pier." (Gardner, folio 35.)

3. The *Rambler* was then engaged in taking cargo out of a ship there. It was therefore necessary for her to retain her berth, or the ship would be delayed and she herself greatly injured in her business.

"Was loading with bundles of iron from ship *Great Western*, "laying at Pier 23; was receiving the iron from the dock, and "was lying from the previous day at the end of the dock; had "taken in part of load and knocked off to take in residue "next day." * * "It was necessary for him to be there to "get the iron." (Russel, fol. 17.)

"Should not haul away at night if part loaded; would be "in danger of losing his berth." (Earle, fol. 33.)

And see also the testimony taken in this Court in the Addition to the Record.

Schenck, fols. 3, 4.
Byrne, fol. 6 & 8.
Mahan, fol. 12, 13, 14.

4. It is, doubtless, more exposed and dangerous, but it is not negligence to lie there, nor does the necessity justify sinking us. There is exposure and danger everywhere; there is risk in all business; the weak are in danger from the strong.

Lighters must *retain their berths*, or discharging cannot go on. They cannot begin to discharge and go away and let another vessel get the berth. They must lie somewhere, and everywhere they will be in the way of the rash and careless. Having taken their places, they have the prior right of occupancy.

"Vessels lying safely in their berths have a right to exact of others, in taking a position near them, that they so do it as not to be the occasion of damage to them."

The *bark Jason*, July, 1849.

The proof on the other side is that the witnesses never saw a "barge" there, the counsel carefully avoided asking as to canal boats, lighters and other vessels.

No one can pretend that the ends of all the piers are to be kept vacant all the night. It would greatly diminish the

capacity of the Port of New-York. There are 124 piers on the New-York shores below Fourteenth street, which may be occupied with vessels.

The captain of the steamer says it is rare not to find on his arrival at that hour at least one or two vessels at the end of this very pier. (King, fol. 22.)

5. Damages have been frequently awarded in this District to vessels lying at the ends of the piers. So far as adjudication can make it, it is the *settled law* that lying at the end of the pier is not negligence.

In 1847 the *Henry Barclay*, lying at the end of the pier, recovered damages. Betts, J.

In 1855 *Judge Hall* decreed damages to a *canal boat* lying at the end of a pier.

The *Snow Squall*, March 30, 1855.

In 1858 it was again adjudged that a vessel "was rightfully at the end of the pier."

The *brig Albert*, 1858.

Judge Ingersoll says, "If a steamboat take such a dangerous course as running so near the *ends of the piers*, she must expect to be made liable for all consequences."

The *Cement Rock*, June 14th, 1855.

6. If the end of the pier was an improper place, that gave the steamer no right to run over the barge. To make this excuse available she must show that she could not, with all care, see and avoid us. *But the proof is that they did see us in ample time* to have avoided us. *The pilot of the steamer, who ordered the boat ahead*, (fol. 29,) swears expressly that he saw the *Rambler*, before going ahead, and *after* that, the order was given to go ahead. (Fol. 28.)

They were then lying still, and might have gone where they pleased; they might have put her under slow and easy motion, instead of ordering "the engine open, and to go ahead with full force," at full speed; they might have used lines to haul in.

It was a most dangerous and reckless manœuvre, and the steamer cannot escape the consequences of its failure

7. Lying without a light.

No one ever heard of a light on a vessel lying at the

dock; no rule of law or case can be found requiring such a thing.

A striking piece of testimony is that of Pomeroy, (Fol. 26,) "No lights at end of pier, no light on any of the vessels." He was the public watchman on pier 23, stationed there 14 months.

And, moreover, they saw her in time, careless as they were. Had they looked when they first passed her, they could not have failed to see her then. Part of her stood thirteen feet above the water. (Fol. 19.) She was covered with a white sail. (Earle, fol. 35.)

She could be seen 300 feet off, (Russell, folio 19;) 150 yards, (Pease, fol. 19,) she was seen from the Fulton Ferry; (Russell, fol. 19,) *spars* of vessels on Brooklyn side were seen. (Fol. 30, Lane.)

She was much more visible than the dock; the steamer being ten feet on the barge, was within seven feet of the *dock;* with such a vessel at such a time they were running under a full head of steam *within seven feet of a solid pier, and within* 17 *feet of the Great Western.*

8. Lying without a watchman.

There is no use of a watchman except against thieves; and there was a public watchman. (Pomeroy, fol. 25.)

A watchman *could do nothing to help the barge.* He could not move her; he could not bring any one to her assistance; what should he do? when should he hail? when the steamer was rounding to? when she was passing him in safety and at a distance? when she was backing? when she was stopping for one ferry boat or the other? when must he make up his mind that they were coming into him? when they rung the gingle and came with full force, and not before, and *then it was too late.*

The witnesses for the steamboat say it is dangerous, not prudent, if you can avoid it, to lie at the end of the pier; proper to have a light and a ship keeper.

It would be safer and better when a vessel is at anchor to establish a picket guard, and have all hands on deck all night, and so on, but *the law does not require it.*

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To require all vessels, or all vessels without masts even, when at piers in this port, to keep a light burning and a watch, would entail upon shipping an enormous nightly expense; it is never done; it has been expressly decided that vessels lying at the wharves are not bound to have a watch. (Kenyon *vs.* Chapman, Nov., 1848.) This decision has been followed for years; and the Court will not lay down a *new rule* to save a steamer in as gross a case as this.

9th. The Harbor Master's Regulations do not touch the case.

We were not in the stream; in the stream is away from the dock, out in the river.

We were not at anchor.

If we had been in the stream and at anchor, and without a light or watch, the steamer would not be justified in running over us at full speed, when the pilot "who ordered her ahead" had seen us.

"A vessel lying in a *common thoroughfare* without light or watch, is not deprived of her right to recover unless the defendants make it appear that it was impossible to avoid her."

(The Bark Hopewell, Nov. 1852.)

The *Rambler* was not in a thoroughfare.

VI.—As to the question of the amount of damages, it is sufficient to say that the exceptions to the last report, fol. 133, (which was confirmed,) may be treated as frivolous, except the 7th and the 3d. 2 Black, 583–4. *The ship Potomac.—Ibid* 580, *Russel* vs. *Ely.* 1 *Wallace*, 50. *The Commander in Chief.*

They are in substance:—1st and 2d exceptions—the Commissioner incorrectly admitted and excluded testimony; 4th, 5th, 6th, 8th exceptions—the Commissioner reported too large an amount;

7th—Commissioner has erroneously allowed interest.

Interest is universally allowed in such cases.

3d—the Commissioner has decided that there was no market value of the barge by which he could be governed.

This exception should state what was the market value, if any, and refer to the proof.

But if this exception be sufficient in form, then the report in this respect is sustained by all the testimony.

"At public sale she might have brought something, and she might have brought nothing."

(Simmons for Defence, fol. 59.)

I am not aware that there was any market value in December, 1857, for vessels of the kind of the *Rambler*.

(Poillon for Defence, fol. 69.)

She was a barge before I altered this last time. I used to call her a hulk. She was a barge or something fitted to this business to carry iron, chalk, or iron heavy goods. Mr. Wetmore has several other lighters to carry heavy goods. They are similar to this. This vessel differed from the barges and lighters around the harbor, in the stanchions and things fixed in her.

(Gardner, fol. 84.)

She was called the "*Old Rambler.*" I called her the "*Hulk.*" Our people called her some one thing, and some another.

She was commonly called the "*Rambler.*" I don't know as I can give any other name for her.

(Gardner, fol. 85.)

A. Was there not a buying and selling of these old vessels in the Port of New-York, in December, 1857, and before and since?

(Objected to by Mr. Benedict, on the ground, it should be confined to vessels like the *Rambler*. Objection overruled. Exception.)

A. I never knew any one of the kind of the *Rambler* bought and sold in my life.

Q. What do you mean by the kind of the *Rambler?*

A. The easiest way I can clear that: I mean a thing fitted out in that way for carrying great weight on her deck especially. (Gardner, fol. 86.)

I know a craft by the name of the *Rambler*, owned by Mr. Wetmore; she was a hulk when Mr. Wetmore owned her; all the name I ever heard of was the *Rambler*; I do not know what to call her; I don't know what you would term her; she was used for lightering; I know that was the business he used her for; I have seen old hulks; I never saw one fixed up as she was, as I know of, for that business; I never knew of any such a one being sold in this port; she was the only one I ever knew of; if I wanted to buy such a thing I don't know that I could; I don't know where I should look for one;

there is no market for such a thing, to my knowledge; if such things were bought and sold in this market, I would have known it.

(Divine Burtis, fol. 88.)

Q. What was she worth in market?

(Objection reserved.)

A. That is a pretty hard question for me to answer; it's owing to whether there is a buyer for her who wanted her. Articles won't fetch what they are worth always.

(Divine Burtis, fol. 92.)

I know the craft formerly owned by Mr. Wetmore, known as the *Rambler*. She was a hull of a vessel, or hulk, or something of that kind. I know of no other craft like her—not exactly like her. I do not know of any such vessels being bought and sold in this market. I don't know of any body who has use for any such craft in this port except Mr. Wetmore. Mr. Wetmore owns a yard for the storage of railroad and pig iron.

(McCrery, fols. 93–94.)

She was not fit for general lighterage business. Mr. Wetmore is not engaged in the lightering business no further than his own business is concerned.

(McCrery, fol. 94.)

I know the craft called the *Rambler*, owned by Mr. Wetmore. She had been a schooner or brig in former times, and she was altered from that to a barge, or anything you please. She was fitted up from an old vessel, for the express purpose of carrying her cargo on deck, with the exception of little; we might put a little below, but a little when we had a full cargo. She was not adapted to carrying anything in her hold.

(Earle, fol. 98.)

Q. Was this craft fitted for carrying perishable goods of any kind?

A. No, Sir.

Q. Could she be used for general lightering business?

A. No, she could not.

Q. What was she good for?

A. She was fitted up expressly for carrying iron on her deck. She was capable of carrying 150 tons of iron on her deck; I am acquainted with the various craft used in this harbor in connection with shipping; I don't know as there is a vessel like her in this harbor of her description.

Q. How did this vessel differ from those old vessels?

A. She was fitted up for the purpose of carrying her cargo on deck.

Q. Who has any use for such a craft in this harbor except Mr. Wetmore?

A. I don't know of any one who has use for such a craft in the same business except Mr. Wetmore.

Q. Did you ever know of a craft like her being bought or sold in this harbor?

A. No, Sir.

Q. Could or not Mr. Wetmore have sold the *Rambler* if he had wished?

A. That I don't know.

Q. Have you any idea what she would have sold for if he had wanted to sell her?

A. I don't know of any market for anything of the kind.

She had iron rods running across her; her floor timbers were good; they were Hactmatack wood; I never knew of any old hulk of any kind being sold in this harbor; Mr. Boyer would not keep such a boat as her, nor men engaged in such business as he was; they have sail lighters in their business; North River bargemen would not have any use for such a craft as she was.

(Earle, fols. 100, 101, 103, 104.)

I am acquainted with the kind of craft used about shipping in this harbor; I never knew of any craft like the *Rambler* in this harbor; she was got up for a specific business; she was fitted up expressly for carrying railroad iron and all kind of iron from our own yard for our own purposes; I am not aware that any body in New-York has any use for a vessel like her; I never knew of any such craft being bought or sold in this harbor.

She could not carry dry goods or that like, because her hold was devoted to stanchions, &c.

Of all the lightermen I don't know of any who would want the *Rambler*, because she would not answer their purpose; no one in this port carry enough iron to employ the *Rambler* except Mr. Wetmore. (Forrest, fols. 105, 106, 107.) I never saw such craft as that before; I have seen all kinds of craft in this harbor. (McEwen, fol. 130.)

E. C. BENEDICT,

Advocate for Libellant and Appellant.

175 yds [illegible]

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

David W. Wetmore,
Libellant and Appellant,
vs.
The Steamboat Granite State, The New Haven Steamboat Company,
Claimants.

Statement and Points of the Claimants.

This is an appeal in Admiralty from a decree of the Circuit Court for the Southern District of New York, reversing a decree of the District Court in a case of collision.

The collision occurred before daylight on the morning of the 18th December, 1857, between the steamboat *Granite State* and the libellant's barge *Rambler*, while the former was attempting to reach her berth, having just arrived on one of her regular trips from New Haven, Connecticut, with freight and passengers.

This barge, an old hulk without masts, was lying at the end of pier 23, East River, without a watch or any light set upon her to reveal her situation. She lay with her head to the westward toward the Battery, her deck being two feet or more below the surface of the pier, her stern extending 15 or 20 feet beyond its side, and her color being like that of the pier. (Rec. p. 8, f. 18; p. 11, f. 25-26.)

This pier, commonly known as the Black Ball pier, is 400 feet in length and extends about 60 feet farther out into the river than any in that vicinity. (Rec. p. 11, f. 26.)

The ship *Great Western* with masts and spars, lay in the slip on the upper side of this pier with her head up the dock, her stern being about twenty feet inside of the end of the pier ; another large vessel, with masts and spars, lay on the opposite or lower side of the pier with her stern about the same distance inside where the barge lay. (Rec. p. 8, f. 18.)

The barge lay in the shade of the pier and of these two ships, without a watch or any light to reveal her position ; nor was there any city lamp or other light on or near the end of the pier or upon either of the above vessels, or elsewhere, to cast any light upon the barge or in anywise disclose her position. (Rec. p. 11, f. 26.)

The slip used by the Williamsburg ferryboats is between piers No. 25 and 26, being above or to the eastward of the pier at which the barge lay, and of the slip used by the claimants' boats. (Rec. p. 9, f. 21.)

The slip used by the Fulton Ferry Boats is between piers Nos. 21 and 22, below or to the westward of those before named.

The steamboats belonging to the claimants' line, arrive at New York upon their regular trips in that season of the year, before daylight and at or about 4 o'clock in the morning. When the tide is ebb they come down on the Brooklyn side and then round to and approach their slip, heading to the eastward or up the river. (Rec. p. 8, f. 21.)

The night in question was dark and rainy, with a strong wind from the southeast setting towards and upon the ends of the piers—the tide was the last of the ebb.

The steamboat *Granite State* arrived at New York at about the usual hour and in attempting to reach her berth came in contact with the barge, her port wheel striking the port quarter of the barge as hereafter stated.

Before and at the time of the collision the steamboat had been and was under the command and direction of a skillful master and pilot, who, with the wheelsman, were at their usual stations in the pilot-house on the forward part of the boat, looking out and directing her movements. There was also a lookout stationed forward, who was faithfully attending to that duty and nothing else. The mate and all hands were on deck at the usual stations occupied by them when

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the steamboat is approaching her berth. The engines were in good condition and under the direction of a competent engineer. Everything was in order, and every person at his place.

The steamboat, having rounded to as usual on an ebb tide, was proceeding up towards her berth, and had arrived near to it, when a Williamsburg ferry boat started out of its slip just ahead, which made it necessary to stop and back to avoid a collision. The steamboat was thereupon backed down, with her stern angling out towards the middle of the river, until compelled to stop backing, and start ahead to avoid a collision with a Fulton ferry boat, which had just then started from its slip.

During this last movement ahead, and when the steamboat's forward quarter was about abreast of pier 23, proceeding towards her berth, the barge was discovered (and promptly reported) under the end of the pier, not more than 50 or 60 feet from the port side of the steamboat, and as the wind and tide were sagging the steamboat in towards the barge, the only possible way of avoiding a collision was to work the engines strong, and so shoot ahead, if possible, past the barge before the steamboat could sag down upon it. This was promptly done, and it was the only thing that could have been done under the circumstances to avoid a collision.

Upon these facts his Honor the Dristict Judge decided that the barge was lawfully lying at the end of the pier; that it was the duty of the steamboat to avoid her, and having failed to do so, she was condemned to pay the damages, but his decision and decree was, on appeal to the Circuit, reversed, and the libel dismissed, with costs.

POINTS.

First.—The mere fact of a collision does not render a vessel liable for damages, unless it has been caused by some fault or negligence on her part. In this case the collision was not caused by any fault or neglect of duty on the part of those having charge of and navigating the steamboat. The barge could not have been seen sooner than it was, and when seen and reported everything was done which could have been to avoid the collision.

"The Morning Light" 2 Wallace U.S. Rep 550.

I. It was lawful and proper to attempt to bring the steamboat into her berth—using all proper care and vigilance to avoid other vessels lawfully lying or being in the vicinity. Although the night was dark and stormy, yet no witness pretends to say that it was in any degree improper or unsafe for the steamboat to attempt to reach her berth on that occasion, or that she would not have done so in safety, if it had not been for the embarrassments arising from the movements of the two ferryboats. But,

II. The steamboat should not be held responsible for such embarrassments. She was not intentionally, or or by any improper navigation, brought under the same. Those embarrassments occurred suddenly and unexpectedly, obstructing her usual course of navigation, and could not have been anticipated by any reasonable caution.

III. It was proper, under the circumstances, for the steamboat to run along the ends of the piers in that vicinity. It was the usual and customary course of navigation on an ebb-tide—although the wind may have sagged her more than usual in towards the piers. The steamboat does not enter her slip as a ferryboat, but the usual course was and is to run up along the ends of the piers and make fast her bow to the end of

pier No. 26 (the next above the Williamsburgh ferry slip), and then work her stern around into her slip.

Rec., p. 10, fol. 23.

IV. The barge was seen at the earliest possible moment. There was no fault on the part of the steamboat that her position was not discovered sooner; no witness pretends to say that there was any fault in this respect.

All the witnesses agree that as the barge lay under the end of the pier it was impossible to see her any considerable distance, or even sooner than she was. She was seen and reported at the earliest moment that she became visible to those on the steamboat.

Rec., p. 11, fol. 26; p. 12, fol. 27.

It was an unusual place for a barge to lie. None of the witnesses, who were on the steamboat, and who had been accustomed for many years to come in at that hour of the night, had ever seen or known a barge to lie in that way before. They had not, therefore, any reason to apprehend that there might be a barge lying there, any more than a row boat.

Rec., p. 10, fol. 22; p. 11, fol. 25; p. 12, fols. 29, 27.

They saw the other two vessels with their masts and spars, and if any vessel with masts and spars had been lying across the end of the pier she would have been seen in time to have avoided her, but not so as to the barge lying under the pier.

V. As soon as the barge was discovered she was reported, and every effort made which could have been to avoid a collision.

All the witnesses concur in stating that nothing better could have been done after the barge was discovered than to work the steamboat forward as strongly as possible, so as to shoot by before she would sag in upon the barge. There is no contradictory evidence upon this subject, and this movement was promptly

made. No one pretends to say that this was wrong, or that any other movement should have been made. In this, therefore, there was no fault; none is even alleged.

Nor was there any error committed in putting the helm, at that time, to starboard, for (as the steamboat turns nearly upon her centre) that movement tended to throw the stern more out and away from the barge: moreover, no witness pretends to say that this was a fault.

VI. Even if the barge could have been seen, and avoided by unusual excessive watchfulness and caution (which is not pretended), still there was no fault, under the circumstances, attributable to the steamboat. As the barge lay in an unusual and obscure position, such excessive caution was not required. The question is, whether those on the steamboat exercised all the precaution and care which the law required under the circumstances. This they did.

Kelsey *vs.* Barney, 2 Kern. R., 425.
Ward *vs.* Armstrong, 14 Ill. R., 283.
Moore *vs.* Moss, do. 106.

VII.—Admitting, for the argument, that the barge had a right so to lie under the end of the pier, still the fact that she lay there without a light or watch to facilitate her discovery by approaching vessels, properly enters into and should influence the judgment of this Court in deciding the question of negligence on the part of the steamboat.

The Osprey, 2 Wallace C. C. R., 268.
Simpson *v.* Hand, 6 Wharton R., 324.
The Petrel, 6 McLean R, 491.
The Sciota, Davies R., 359.
The North America, 2 N. Y. Leg. Obs., 67.
The Senator, 1 Cal. R., 457.

The same principle is applied in cases where a vessel under sail in the night (though not so required by law) fails to display a light in time to disclose her

position to an approaching vessel. The law in such cases does not consider it a fault on the part of the approaching vessel in not seeing the other in time to avoid a collision.

Second.—The collision was, as respects the steamboat, an unavoidable accident, and the decree of the Circuit Court dismissing the libel was therefore correct, and should be affirmed.

Third.—If, however, the Court should consider that the steamboat was in fault, and liable for the damages to the barge, then it is submitted that such damages should be apportioned between her and the barge, because the latter was in fault in lying where she did without a light or a watchman to warn the steamboat of her presence.

Rec., p. 10, f. 23; p. 11, f. 25; p. 12, f. 21; p. 13, f. 31; p. 14, f. 31.

I. If the barge had laid at anchor even where she was, and had not been attached to the pier, she would have been considered *in the stream*, and bound by the rules of the harbor masters, as well as by the State law, to have had a light.

Laws of N. Y., 1850, p. 81.
Harbor Masters Reg., Rec. p.
The John Fraser, 21 How., 184.

Although she was not so anchored, still she was in effect *in the stream*; she lay in the current caused by the ebb and flow of the tide.

The General Taylor, 1 E. D. Smith R., 588.

Lying as she did in an unusual place, the maritime

law required her to have a light, and the neglect to have one was a positive fault.

Cases cited, *ante*, p. 6.

Fourth.—*As to damages.* Upon this there has been much litigation, especially in reference to the value of the barge. By his first report the commissioner found her value *to the libellant* to be $850, but upon exception this report was set aside, and the case referred back with instructions to revalue her on the principles stated in the opinion of the Court. (Rec., p. 30.) He afterwards made his second report, fixing her value at $1,000 (there being no material difference in the testimony), which was also upon exceptions set aside, and further special instructions were given as to the mode of ascertaining her value. (Rec., p. 46.) The commissioner afterwards made his third report, in which he fixed her value at $895 (Rec., p. 47, 48), to which exceptions were filed, and duly argued, but overruled *pro forma*. (See Judge Shipman's note upon the subject.) The libel having been dismissed in the circuit, the question of damages was not considered. It is therefore insisted that—

I. In his third report, as well as in his two former ones, the commissioner adopted an erroneous rule in ascertaining the damages for the loss of the barge.

1. The rule by which he should have been guided had been laid down by the Court in its decision on the exceptions to the first report (Rec., p. 30), and again in the special order setting aside the second report, and directing a reappraisement (Rec., p. 46); moreover, the law was otherwise well settled that, in case of total destruction, the party can only recover the value of the vessel at the time and place of loss.

Still the commissioner, in his last as well as in his former reports, persistently adopted a different rule.

In his last report (Rec. p. 47, f. 132), after concluding that there was no *market* for such a barge, he adopts as a rule "*the actual cost of reparations and alterations to restore her to the value she had when collided against.*" (Rec., p. 48, f. 134.)

2. But the commissioner erred in concluding that there was no *market* for such a barge, and he was not justified, therefore, in adopting the above rule.

The testimony clearly established the fact that there were other persons engaged as well as the libellant in the same and similar lighterage business, who required and used such barges; that there was a buying and selling in New York of such as well as other kinds of barges. One of the libellant's witnesses had stated that a few months before the collision he had applied to the libellant to purchase this barge. This *buying and selling* constitutes a market.

Sedgwick on Damages, p. 278.
Blydenburgh *v.* Welsh, 1 Bald. R., 331.

Those witnesses who pretended to say that there was no market were obliged to qualify their testimony upon that subject, by adding that they did not know of any market for barges "fitted up in this particular way." But there was nothing peculiar in the way the barge was fitted up that affected her marketable character. All the witnesses say that the only difference between her and other barges was that she had extra stanchions and kelsons to stiffen her—a thing by no means uncommon in old barges.

Rec., p. 42, f. 117–18.

3. Since, then, there was a market for such barges, the Commissioner erred in taking as the rule of damages "the actual cost of *reparations and alterations* to restore her to the value she had when collided against." Moreover, that rule was improper,

inasmuch as it appears and was an undisputed fact, that no attempts were ever made to repair the barge.

Although she was only struck by two or three buckets of the wheel on her port quarter, still she was so rotten that she could not be repaired; she was not worth anything. Her old materials were utterly worthless; even the iron in her was rotten.

But if the Commissioner had, in this respect, adopted the correct rule, still there was no testimony showing, or tending to show, what it would have cost to make such "reparations and alterations."

II. The true rule of damages required the Commissioner to ascertain her market value at the time and place of collison—what she would have produced upon a sale.

1. The testimony clearly establishes the fact that she was not worth the sum allowed therefor by the Commissioner, nor more than about $180.

There is no contradictory evidence as to her real condition, and while it is true that she was in use, yet she was in reality rotten and worn out. Her true condition may not have been fully known before the collision, but that revealed it. She was carefully examined after the collision by a number of competent judges, all of whom concur as to her worthlessness. These persons, after such examination, valued her, as she was before this collision, as follows:

Samuel Sneden (Rec. p. 21)	says	she	was	worth	$200
W. G. Hackstaff,	"	" 22	"	"	100
Wm. Thompson,	"	" 23	"	"	250
Jos. Tinkham,	"	" 23	"	"	100
E. F. Williams,	"	" 23	"	"	125
S. Simmons,	"	" 24	"	"	300
John F. Williams,	"	" 24	"	"	150
Sam'l S. Goodman,	"	26	"	"	300

Stephen Glover,	"	" 26	"	"	nothing.
R. H. Post,	"	" 26	"	"	"
R. Poillon,	"	" 27	"	"	$500
John Schenck,	"	" 39	"	"	100
Wm. Petty,	"	" 42	"	"	300

The average value placed upon her by these witnesses was about $186.

The most of the witnesses on the part of the libellant estimated her value from what they knew and saw of her before the collision. They did not see her afterwards when her entire rottenness was revealed. They, however, say that while they would not have given anything for her, and do not know that she would have brought anything in market, yet, for the libellant's *use*, she was worth from $1,000 to $1,500; but, as some of them said, to bring that sum, she ought to have been pretty sound—which she was not.

The question is not what she would have been worth if in a sound state, nor what she was worth for the libellant's *use*, nor at what price she might have been sold by suppressing the truth of her real condition, but what she was worth in the real condition in which she was discovered to be by the collision.

The witnesses, Glover and Post, testify that if her real condition had been known, no one would have been willing to give anything for her, and hence they concluded that she was worth nothing. (Rec., p. 26, 38, 39.)

Fifth.—If, therefore, the Court should conclude that the steamboat was in fault and liable for the damages, the amount reported by the Commissioner should be reduced,

and the decree of the District Court should be modified accordingly, or the case should be remitted to the Circuit to have the damages re-ascertained and stated under the direction of that Court.

E. H. Owen,
Counsel for the Claimants.

U. S. CIRCUIT COURT.

DAVID W. WETMORE,
vs.
THE STEAMBOAT GRANITE STATE.

NELSON, C. J.—The collision in this case occurred between the *Granite State* and the barge *Rambler*, about four o'clock on the morning of the 18th December, 1857, in the East River, off pier No. 23.

The steamer had arrived on one of her regular trips from Hartford, Conn., and was in the act of entering her slip, between piers Nos. 24 and 25. The barge lay across the end of pier No. 23. This pier extended some sixty feet further out in the river than the piers in the immediate vicicity, above and below. The barge had no masts, and her hull lay below the top of the pier; that is, the pier was higher than the vessel, as she lay in front of it. The barge was well secured in her place, but had on board no watch or light. She had been taking in loading from the dock, which was discharged from a vessel lying in one of the slips. The morning was dark and rainy, with a pretty strong wind from the southeast; the tide the last of the ebb. The steamer came down on the Brooklyn side, and at the proper point, swung round toward the New York shore, and straightened up, with a view to work into her berth. As she was approaching it, a Williamburgh ferry boat came out of her slip, which was between piers 25 and 26. the next above the berth of the steamer, which compelled her to stop and back, with stern-way, obliquely into the river, until obliged again to change her direction, and go ahead, to avoid a collision with a Fulton ferry-boat that had just come out of her berth, between piers Nos. 21 and 22, below where the barge lay. The steamer, while thus going ahead, to get into her berth, after the embarrassments stated, struck the larboard quarter of the barge with her wheel, and caused the damage complained of. The barge was not discovered till within some fifty or sixty

feet of her—the steamer at the same time going ahead, and sagging in toward her—and although every effort seems to have been made, which could be, for the moment, —orders being immediately given to work strong, with a view to pass before the steamer was carried by the sagging against her—it was too late to avoid the contact.

Much testimony is taken in the case upon a question of usage, whether or not the barge, in the exposed position where she lay, should not have had on board a watch or light. We do not say, upon these proofs, that she was in fault, so as to subject her to a portion of the damages if the *Granite State* had also been in fault; but we are bound to say that, so far as a watch or light might have facilitated the discovery of her by the approaching vessel, omission is a matter properly entering into, and influencing the judgment of the Court, upon the question of negligence on the part of that steamer. To this extent the barge is obliged to assume the responsibility of the omission. This principle has been repeatedly asserted and applied.

Now, upon the proofs, we are quite satisfied, taking into view the position of the barge, at the end of the dock, undistinguishable, in a dark and rainy night, from the end of the dock itself, and neither light nor watch on to give notice of its position, it was no fault on the part of the *Granite State* that she did not discover it earlier than testified to, when it was too late to avoid the collision.

All the hands examined on board the steamer agree that it could not have been discovered earlier. They saw the large vessels in the slips, and say they might have seen a vessel in front of the dock if she had had masts or a light.

The steamer was completely manned, and all hands having been called to the deck, up the river, with a view to preparations for entering her berth and landing her passengers, we do not see that the steamer omitted any duty that devolved upon her in the emergency. She had adopted the usual measures to work herself into her berth, and pursued them with skill and diligence; and nothing but this half concealed object at the end of the dock, which she met unexpectedly, and in a most exposed condition, led to the misfortune. I think the Court below erred, and that the decree should be reversed and the libel dismissed.

For libellant, Messrs. Benedict, Burr and Benedict; for claimants and appellants, Messrs. Owen, Gray and Owen.

DECISION OF THE DISTRICT COURT, as published in the newspapers, and referred to in Record, page 30, fol. 80.

DAVID W. WETMORE,

agst.

The STEAMBOAT GRANITE STATE.

This case came up on exceptions to the report of a Commissioner, to whom it was referred to ascertain the damages sustained by the libellant, by reason of the sinking of the barge *Rambler*, owned by him, by the *Granite State*. The Commissioner, among other things, allowed $850 for the loss of the vessel, to which the claimants excepted.

Held by the Court: That the rule of law regulating damages to property by maritime torts, is that of *restitution in integrum*, or compensation equivalent to the worth of the thing lost at the time and place of the injury, or what it would produce on sale.

That the particular or special value of the vessel destroyed for the service in which she was engaged at the time, does not form the criterion of loss to her owner, to be replaced by the colliding vessel, but the sum she would produce on public sale in her condition at the time, or which would be necessary to restore her to that condition if reclaimed and found repairable.

Ordered, that the report of the Commissioner as to the value of the vessel be set aside, and that the cause be remitted for a re-valuation of the vessel on the principles of this decree. All other exceptions overruled.